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To
Count Rumford
from
the Author.

Supply without Burthen;

OR

ESCHEAT *vice* TAXATION:

BEING A

PROPOSAL

FOR A

SAVING IN TAXES

BY AN

Extenſion of the Law of Eſcheat:

INCLUDING

STRICTURES on the TAXE

ON

COLLATERAL SUCCESSION,

COMPRIZED IN THE

Budget of 7th Dec. 1795.

To which is prefixed,

(*Printed in* 1793, *and now firſt publiſhed,*)

A PROTEST

AGAINST

LAW TAXES:

SHEWING THE

Peculiar Miſchievouſneſs of all ſuch Impoſitions as add to the Expenſe

OF

An Appeal to Juſtice.

BY JEREMY BENTHAM,

OF LINCOLN'S-INN, ESQ.

LONDON:

Printed for J. DEBRETT, oppoſite Burlington-Houſe, Piccadilly.

1795.

PREFACE.

OF the two eſſays now laid before the Public, that which preſents a new reſource was ſubmitted to the proper authority in the month of September, 1794, but was not fortunate enough to be deemed worth further notice. The arguments which it contains will ſpeak for themſelves: none were controverted, nor any hinted at on the other ſide; only, as a matter of fact, it was obſerved,

that it had not been cuſtomary of late for the *Crown* to avail itſelf of the branch of prerogative here propoſed to be cultivated for the *public* uſe.

Nobody can ſuppoſe, that the Miniſter would not gladly have availed himſelf of this, as of any other, ſource of ſupply, had it promiſed, in his conception, to conciliate the voice of the public in its favour. Nobody can ſuppoſe, that, if the apprehenſions that occurred in proſpect ſhould ever be diſpelled by the event, the ſenſe of the public would find him backward in conforming to it. It is natural, that the difficulties attending a meaſure of conſiderable novelty and magnitude, ſhould ſtrike with a

force proportioned to the reſponſibility of the ſituation to which the meaſure is preſented. It is natural, that they ſhould ſtrike with leſs than their proper force, on the imagination of him in whoſe conception it received its birth.

The idea had been honoured with the approbation of ſeveral gentlemen of eminence at the bar, ſome of them in Parliament, as many as had had the paper in their hands. If they were right in their wiſhes in its favour, it by no means follows, that thoſe to whom it was ſubmitted in their official capacities, did otherwiſe than right in declining to make uſe of it. Of all the qualifications re-

quired at the Board to which it was preſented, one of the moſt indiſpenſable is *the ſcience of the times*; a ſcience which, though its title to the name of *ſcience* were to be diſputed, would not the leſs be acknowledged to be in the ſituation in queſtion, *fairly* "*worth the ſeven.*" For that maſter-ſcience none can have higher pretenſions than the illuſtrious chief of that department, none leſs than the author of theſe pages.

Neither his expectations, nor ſo much as his wiſhes, in relation to this propoſal, had extended ſo far as to its immediate adoption. It now lies with the public, who, in due time, will grant or refuſe it their paſſport to

to the Treaſury and to Parliament, according to its deſerts.

The "*Proteſt againſt Law-Taxes*" had better fortune: it received from the candour of the Miniſter on whoſe plans it hazarded a comment, all the attention that candour could beſtow; and, if I do not miſrecollect, the taxes complained againſt did not afterwards appear.

The publication of it in this country was kept back, till the propoſal fora ſubſtitute to the tax complained of ſhould be brought into ſhape: upon the principle of the parliamentary notion, which forbids the producing an objection to a tax, without a propoſal for a better on the back of it,

it. The two eſſays ſeemed no unſuitable accompaniments to each other: mutual light promiſed to be reflected, by the contraſt between the beſt of all poſſible reſources and the worſt.

A PRO-

A PROTEST

AGAINST

LAW TAXES,

SHEWING THE

PECULIAR MISCHIEVOUSNESS

OF

ALL SUCH IMPOSITIONS

AS ADD TO

THE EXPENCE

OF

APPEAL TO JUSTICE.

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A PROTEST

AGAINST

LAW-TAXES.

TAXES on law-proceedings conſtitute in many, and perhaps in all nations, a part of the reſources of the ſtate. They do ſo in Great Britain: they do ſo in Ireland. In Great Briain, an extenſion of them is to be found among the lateſt productions of the budget: in Ireland a further extenſion of them is among the meaſures of the day. It is this impending extenſion that calls forth the publication of the preſent ſheets, the ſubſtance

of which has lain upon the ſhelf theſe many years.

It is a well-known parliamentary ſaying, that he who reprobates a tax ought to have a better in his hand.* A juſter condition never was impoſed. I fulfil it at the firſt word.—My better tax is——any other that can be named.

The people, when conſidered with a view to the manner in which they are affected by a tax of this deſcription, may be diſtinguiſhed into two claſſes: thoſe who in each inſtance of requiſition have wherewithal to pay, and thoſe who have not: to the former, we ſhall find it more grievous than

* It confines itſelf of courſe to public men, or what comes to the ſame thing, private men ſpeaking in the character of public. As for individuals aggrieved, they have performed their part when they have ſtated their own grievance.

any

any other kind of tax, to the latter a ſtill more cruel grievance.

Taxes on conſumption cannot fall but where there is ſome fund to pay them: of poll taxes, and taxes on unproductive property the great imperfection is, that they may chance to bear where ſuch ability may be wanting. Taxes upon law proceedings fall upon a man juſt at the time when the likelihood of his wanting that ability is at the utmoſt. When a man ſees more or leſs of his property unjuſtly withholden from him, then is the time taken to call upon him for an extraordinary contribution. When the back of the innocent has been worn raw by the yoke of the oppreſſor, then is the time which the appointed guardians of innocence have thus pitched upon for loading him with an extra-

ordinary burthen.* Moſt taxes are, as all taxes ought to be, taxes upon affluence: it is the characteriſtic property of this to be a *tax upon diſtreſs.*

A tax on bread, though a tax on conſumption, would hardly be reckoned a good tax: bread being reckoned in moſt countries where it is uſed, among the neceſſaries of life. A tax on bread, however, would not be near ſo bad a tax as one on law-proceedings: A man who pays to a tax on bread, may, indeed, by reaſon of ſuch payment, be unable to get ſo much bread as he wants, but he will always get ſome bread, and in proportion as he pays more and more to the tax, he will

* Even in the inſtance of a defendant, or when the wrong is not pecuniary, the hardſhip of a double yoke does not ceaſe: for the natural expence of litigation is a burthen which this artificial one finds preſſing on him in any caſe.

will get more and more bread. Of a tax upon juſtice, the effect may be, that after he has paid the tax, he may, without getting juſtice by the payment, loſe bread by it: bread, the whole quantity on which he depended for the ſubſtance of himſelf and his family for the ſeaſon, may, as well as any thing elſe be the very thing for which he is obliged to apply to juſtice. Were a three-penny ſtamp to be put upon every three-penny loaf, a man who had but three-pence to ſpend in bread, could no longer indeed get a three-penny loaf, but an obliging baker could cut him out the half of one. A tax on juſtice admits of no ſuch retrenchment. The moſt obliging ſtationer could not cut a man out half a *latitat* nor half a *declaration.* Half juſtice, where it is to be had, is better than no juſtice: but without

buying the whole weight of paper, there is no getting a grain of juſtice.

A tax on neceſſaries is a tax on this or that article, of the commodities which happen to be numbered among neceſſaries: a tax on juſtice is a tax on all neceſſaries put together. A tax on a neceſſary of life can only leſſen a man's ſhare of that particular ſort of article: a tax on juſtice may deprive a man, and that in any proportion, of all ſorts of neceſſaries.

This is not yet the worſt. It is not only a burthen that comes in the train of diſtreſs, but a burthen againſt which no proviſion can be made.

All other taxes may be either foreſeen as to the time, or at any rate provided for, where general ability is not wanting: in the inſtance of this tax, it is impoſſible to foreſee the moment of exaction, it is equally impoſſible to provide

provide a fund for it. A tax to be paid upon the loſs of a huſband, or of a father on whoſe induſtry the family depended, a tax upon thoſe who have ſuffered by fire or inundation would ſeem hard, and I know not that in fact any ſuch modes of taxation have ever been made choice of: but a tax on law proceedings is harder than any of theſe. Againſt all thoſe misfortunes proviſion may be made; it is actually made in different ways by inſurance: and were a tax added to them, pay ſo ſo much more, and you might inſure yourſelf againſt the tax. Againſt the misfortune of being called upon to inſtitute or defend one's ſelf againſt a ſuit at law, there neither is, nor can be, any *office of inſurance*.*

* I ſay there never can be: in thoſe other inſtances the event inſured againſt is always ſome very ſimple event, ſuch as the death of a perſon, which

Such is the cruelty of this ſpecies of tax, to thoſe who have wherewithal to pay, and do pay to it accordingly. To thoſe who do not, it is much more cruel: it is neither more or leſs than *a denial of juſtice.*

Juſtice is the ſecurity which the law

which in the ordinary courſe of things is not open to diſpute. Here the incident which calls for contribution, is not only diſputable, but by the ſuppoſition is actually in diſpute. Nothing leſs than litigation can aſcertain legally, whether litigation has been neceſſary. Have you engaged with a man for his paying you a ſum of money whenever it ſhall become neceſſary for you to inſtitute or defend yourſelf againſt a law-ſuit?—wait till the ſuit is at an end, and you will know whether he ought to pay you. A ſociety indeed, and a very laudable one, has been eſtabliſhed for purpoſes which come under this head: but the relief it affords is confined not only to criminal caſes, but to a certain deſcription of criminal caſes; nor could it be rendered any thing like co-extenſive with the grievance.

provides

provides us with, or profeſſes to provide us with, for every thing we value, or ought to value: for property, for liberty, for honour, and for life. It is that poſſeſſion which is worth all others put together: for it includes all others. A denial of juſtice is the very quinteſſence of injury, the ſum and ſubſtance of all ſorts of injuries. It is not robbery only, enſlavement only, inſult only, homicide only: it is robbery, enſlavement, inſult, homicide, all in one.

The ſtateſman who contributes to put juſtice out of reach, the financier who comes into the houſe with a law tax in his hand, is an acceſſary after the fact to every crime: every villain may hail him brother, every malefactor may boaſt of him as an accomplice. To apply this to intentions would be calumny and extravagance.

But

But as far as conſequences only are concerned, clear of criminal conſciouſneſs and bad motives, it is incontrovertible and naked truth.

Outlawry is the engine applied by the law, as an inſtrument of compulſion to thoſe who fly from civil juſtice. Outlawry is the engine employed as an inſtrument of puniſhment, againſt the moſt atrocious of malefactors. This ſelf-ſame load of miſchief, the financier with perfect heedleſſneſs, but with unerring certainty, heaps on the head of unſuſpected innocence. Beſides outlawry, which in the caſes where the offender could not otherwiſe be affected, comes in as ſubſidiary in lieu of other puniſhment, there are certain offences for which a man is ſubjected, expreſſly and in the firſt inſtance, to a ſimilar puniſhment, under the name of *forfeiture of the protection*

tection of the law. The ſame fate attends a man thus at different periods, according to his merits. If guilty, it lays hold of him after conviction, for a particular cauſe, and without excluding the hope of pardon: if innocent, and poor, and injured—before conviction, and without conviction, and for no cauſe at all, and as long as he continues poor, that is as long as he lives.

What a contraſt! What inconſiſtency! The judge and the legiſlator, deliberating with all gravity, each in his ſeparate ſphere, whether to inflict or not this heavy puniſhment, on this or that guilty individual, or narrow deſcription of guilty individuals. The legiſlator on the other hand, merely to get a little money which he could better get from any other ſource whatever, heaping the ſame doom

doom upon thouſands, not to ſay millions, of innocent and injured ſubjects, without conſideration or remorſe.

Mark well, that of all ſorts of men it is the poor, and they the more certainly in proportion to their poverty, that are deſpoiled in this way of the protection of the law: the protection of the law, that ineſtimable jewel, which in the language of that very law is defined the citizen's univerſal and beſt birth right: the poor and him that has none to help him, theſe are they to whom the help of the law is thus unfeelingly refuſed. The rich, were it from them that this great ſafeguard were with-holden, have ſhields of their own to ward off the attacks of injury: the natural influence of wealth, the influence of ſituation, the power of connection, the advantages of education and intelligence, which go hand

hand in hand with wealth. The poor has but one ſtrong hold, the protection of the law: and out of this the financier drives him without vouchſafing him a thought, in company with the herd of malefactors.

The poor, on account of the ignorance and intellectual incapacity inſeparably attached to poverty, are debarred generally, as perhaps it is neceſſary, were it only for their own ſake, they ſhould be univerſally, from the ſweets of political power: but are not ſo many unavoidable inequalities enough, without being added to by unneceſſary injuſtice?

Such is the deſcription of thoſe from whom this ſum total of all rights is torn away with one hand, while tendered with the other: what are their numbers in proportion to the ſum total of ſubjects? I fear to ſay—perhaps

two

two thirds, perhaps four fifths, perhaps nine tenths: but at the loweſt computation a vaſt majority.*

A third

In England, the expence of carrying through a common action cannot be leſs than about 24*l.* at the loweſt rate, on the plaintiff's ſide alone. [See Schieffer on Coſts, 1792.] The average expence of civil ſuits of all ſorts, taking equity cauſes into the account, can ſurely not be rated at leſs than double that amount, on that one ſide. The average expenditure of an Engliſh ſubject, infants and adults, rich as well as poor, taken together, has been computed by Davenant (as quoted on this occaſion ſomewhere by Adam Smith) at 8*l.* a year. Six years income then is what a man muſt have in advance, before he can be admitted to take his chance for juſtice. Of many eſtimates which Dr. Anderſon had met with, 20*l.* was the higheſt, and he takes but ten pounds. [Intereſt of Great Britain with regard to her colonies, London, 1792.] No man then we may ſay at any rate, can have the benefit of juſtice, in the ordinary way, either in making good a juſt claim, or ſaving himſelf from an unjuſt

A third deſcription of perſons may yet be diſtinguiſhed, whoſe condition under the ſyſtem of law-taxes is ſtill more deplorable, than that of either of the other two: I mean thoſe, who having wherewithal, to pay the impoſition at the commencement of the ſuit, and during more or leſs of its progreſs, ſee their ſubſtance ſwallowed up by the taxes before the termination of it. The two preceding modifications of abuſe, either of them bad enough, are thus put together, and compounded into a third.

Conſidered with a view to the treatment given to perſons of this deſcrip-

juſt one, who cannot find for this purpoſe alone, a ſum equal to ſeveral years of a man's income. From this ſtatement it needs not much ſtudy to perceive that for the bulk of the community, as far as ordinary caſes of the civil kind are concerned, *juſtice* is but an empty name.

C tion,

tion, a court of juſtice is converted into exactly the ſame ſort of place, as the ſhop of a baker would be, who having ranged his loaves along his window in goodly ſhew to invite cuſtomers, ſhould, inſtead of ſelling them the bread they aſked for, firſt rob them of their money, and then turn them out of doors. To an unprejudiced imagination, the alliance between juſtice and finance, preſents on this occaſion a picture almoſt too near the truth to be termed an apologue. At the door of a houſe more predatory than any of thoſe that are called houſes of ill fame, the *Judge* in his robes preſenting to unſuſpecting paſſengers a belt to prick in; the *Lord High Treaſurer* in the back ground with his ſtaff, lying in wait, ready as ſoon as the victims are fairly houſed, and the money on the table, to knock them

them down and run away with it. The difference is, that any man may chooſe whether he will prick in the belt of the unlicenced ſharper, nor are any but the raweſt louts to be ſo deluded: whereas the wiſeſt men may be inveigled in, as well as the ſtouteſt dragged in, by the exalted and commiſſioned plunderers——ſo much ſurer is their game.—For were the liſt of law taxes ever ſo familiar, and ever ſo eaſy to be underſtood, it is impoſſible for a man to know before hand, whether he has wherewithal to pay the bill, becauſe it is impoſſible for him to know what incidents may intervene to lengthen it. Were a man even to ſit down, and form a reſolution to ſubmit to every injury which he could not afford to proſecute for, and to plead guilty to every accuſation which he could not afford to defend himſelf

againſt, even at this price he could not ſave himſelf from the hardſhip of paying for juſtice, aggravated by the ſtill greater hardſhip of not getting it.

If in all caſes the practice is wicked, in ſome it is more particularly prepoſterous. In civil cauſes, and other cauſes where the injury to individuals affords a natural intereſt to proſecute, artificial expences are cruelty and breach of faith: in a large claſs of penal cauſes, in which for want of ſuch natural intereſt, proſecutors muſt be engaged by factitious inducements, or the law be a dead letter, the cruelty and treachery are crowned by blunder and inconſiſtency. Beckoned into court with one hand, men are driven away with the other. But, coſtly as the attractive power frequently is, the repulſive force is apt to be much ſtronger. Reward is ſubſequent, diſtant, uncertain, and dependent upon ſucceſs. Trouble

Trouble, expence, and odium are certain and precedent.*

In favour of this ſpecies of impoſi-

* This ſpecies of tax would ſtand abſolutely alone in point of depravity, were it not for the tax on drugs, as far as it extends to thoſe uſed in medicine. This, as being alſo a tax upon diſtreſs, is ſo far in ſpecie the ſame, but is nothing to it in degree. To recover a ſhilling in the way of juſtice, it will coſt you at leaſt 24l. of which a good part in taxes: but to be admitted to buy a ſhilling's worth of medicine for a ſhilling, it does not coſt you threepence. Hoſpitals for the ſick are not uncommon: there are none for harraſſed and impoveriſhed ſuitors. There are *Lady Bountifuls* that relieve the ſick from the tax on medicines, and the price of them into the bargain: but a *Lady Bountiful* muſt be bountiful indeed, to take the place of attorney and counſel, as well as of phyſician and apothecary, and ſupply a poor man with as many pounds worth of *latitats* and *pleas*, as he muſt have to recover a ſhilling. A man cannot, as we have ſeen, inſure himſelf againſt lawſuits: but a man may inſure himſelf, and many thouſands actually do inſure themſelves, againſt ſickneſs. But theſe reliefs are neither certain nor

tion, I have ſeen two arguments produced.

One is, that in this caſe as in others, the burthen of an eſtabliſhment ought to lie on thoſe by whom the benefit is reaped. The principle is incontrovertible: the matter of fact ſuppoſed by the application of it is not true.

The argument, were it juſt, would not extend beyond ſo much of the produce of the tax as is requiſite for defraying the charge of this part of the national eſtabliſhment. Whether it be confined or no within theſe bounds, was perhaps never thought worth en-

general: and after all, a tax on him who has had a leg or an arm broke, a tax on him who has had a fit of the ague, gout, rheumatiſm, or ſtone, will be the worſt poſſible ſpecies of tax, next to a tax on juſtice.

N. B. The tax on quack medicines, that is on unknown and unapproved medicines, leaving all known and approved ones untouched, falls in a leſs degree, if at all, under this cenſure.

quiring

quiring into, in any country where this tax was impoſed. It certainly extends much beyond them in England, and it ſeems to be reſorted to from time to time, with as little ſcruple, as an extenſion of the cuſtoms or exciſe. But let this paſs.

As to the notion of a connexity in this caſe betwixt the benefit and the burthen, it has been countenanced by an authority too reſpectable, not to deſerve the moſt ſerious notice:* but come it from whom it will, it is a mere illuſion. The perſons on whom the whole of the burthen is caſt, are preciſely thoſe, who have the leaſt enjoyment of the benefit: the ſecurity which other people enjoy for nothing, without interruption, and every moment of their lives, they who are ſo unfortunate as to be obliged to go to

* Dr. Adam Smith, Wealth of Nations.

law for it, are forced to purchaſe at an expence of time and trouble, in addition to what pecuniary expence may may be naturally unavoidable. Mean time, which is of moſt value? which moſt worth paying for?—a poſſeſſion thus cruelly diſturbed, or the ſame poſſeſſion, free from all diſturbance?—So far then from being made thus wantonly to pay an extra price, a man who ſtands in this unfortunate predicament, ought rather to receive an indemnification at the public expence, for his time and trouble: and the danger of inſidious or colluſive conteſts, in the view of obtaining ſuch an indemnity, is the only objection I can ſee, though perhaps a concluſive one, againſt the granting it

Litigation may in this point of view be compared to war in ſober ſadneſs, as war has been to litigation in the

the way of pleaſantry. The ſuitor is the forlorn hope in this forenſic warfare. To throw upon the ſuitor the expence of adminiſtering juſtice, in addition to the trouble and the riſk of ſuing for it, is as if, in caſe of an invaſion, you were to take the inhabitants of the frontier, and force them, not only to ſerve for nothing, but to defray of themſelves the whole expenditure of the war.

What in our times is become inveterate practice, is ſtigmatized as a ſpecies of iniquity without a precedent, by Saint Paul. "*Who is there,*" demands the Apoſtle, "*who is there that ever goes to war at his own charge?*"—"*Alas!*" cries the poor ſuitor, "*I do.*"

The other argument in favour of a ſet of taxes of this kind, is, that they are a *check to litigation.*

Litigation is a term not altogether

ree

free from ambiguity. It is uſed ſometimes in a *neutral* ſenſe, to denote the proſecuting or defending a ſuit, though perhaps more frequently in a bad one. In its neutral ſenſe, it expreſſes the irreproachable exerciſe of an eſſential right: in a bad ſenſe a ſpecies of miſconduct practiſed under the notion of exerciſing ſuch a right.

In the firſt ſenſe, taxes can never have been recommended by any man as a check to litigation: in this ſenſe, an avowed deſire of checking litigation, would be neither more nor leſs than an avowed deſire of denying juſtice.

In a bad ſenſe again, the word is uſed on two different occaſions: where the ſuit, whatever be the importance of the matter in diſpute, is on the part of the perſon ſpoken of as maintaining it, a *groundleſs* one: and where

where the ſuit, however well grounded on his part in point of title, is on account of the ſuppoſed unimportance of the matter in diſpute, deemed a *frivolous*, a *trifling*, a *trivial* one: and in either caſe, it is of courſe applicable to the ſituation of either plaintiff or defendant; though it is apt to fix in the firſt inſtance and moſt readily upon the ſituation of the plaintiff, as being the party, who by taking the firſt ſtep on the commencement of the ſuit, exhibits himſelf as the author of it.

On either ſide, litigation, when *groundleſs*, may be accompanied or not, with what the lawyers call *in genere malitia*, meaning *conſciouſneſs of misdoing*, and in this particular caſe *mala fides*, conſciouſneſs of the groundleſſneſs of the action or defence, conſciouſneſs of the *want of merits*.

Where merits are wanting, but there

there exiſts no conſciouſneſs of the want, taxes on law-proceedings do, it muſt be confeſſed, operate as a check to litigation; and that as well on the ſide where it is groundleſs as on that where it is well grounded, and in the ſame degree. Indeed as both of two contending parties cannot in point of law be actually in the right, though either or both may think themſelves ſo, the impediment cannot operate to the denial of juſtice, but it muſt operate to the prevention of groundleſs litigation at the ſame time. Prevent him who is in the right from inſtituting a ſuit, you prevent him who is in the wrong from defending one. But neither is litigation prevented, any further than as juſtice is denied. So far then as this caſe extends, it is ſtill but the other ſide of the ſame effect, the *denial of juſtice*.

Have

Have they then any peculiar tendency to operate as a check to litigation, when it is not only groundleſs, but accompanied with a conſciouſneſs of its being ſo?—to *malitious*, or as it might with more propriety be termed, *anti-conscientious* litigation? On the contrary, their direct tendency and ſure effect is to produce it.

They produce it on the part of the *plaintiff*.—Were proceedings at law attended with no expence nor other inconvenience, till the ſuit were heard and at an end, a plaintiff who had no merits, could do a defendant man no harm by ſuing him: he could give him no motive for ſubmitting to an unfounded claim: malice would have no weapons: oppreſſion would have no inſtrument. When proceedings are attended with expence, the heavier that expence, the greater of

courſe

courſe is the miſchief which a man who has no merits is enabled to do: the ſharper the weapon thus put into the hand of malice, the more coercive the inſtrument put into the hand of the oppreſſor.

They produce it on the part of the *defendant*. Were proceedings at law attended with no expence, a defendant who knew he had no merits, a defendant who was conſcious that the demand upon him was a juſt one, would be deprived of what is in ſome caſes his beſt chance for eluding juſtice, in others the abſolute certainty of ſo doing: he would loſe the ſtrongeſt incentive he has to make the attempt. A defendant who means not to do juſtice unleſs compelled, and who knows that the plaintiff cannot compel him without having advanced a certain ſum, ſuch a defendant, if he thinks

thinks his adverſary cannot raiſe that ſum, will perſevere in refuſal till a ſuit is commenced, and in litigation afterwards.

Whether they make the litigation, or whether they find it ready made, they ſhew moſt favour to the ſide on which anti-conſcientious litigation is moſt likely to be found. By attaching on the commencement of the ſuit, they bear hardeſt upon the plaintiff, or him who if they have ſuffered him, would have become plaintiff. In ſo doing they favour in the ſame degree the defendant, or him who, if the party conceiving himſelf injured could have got a hearing, would have been called upon to defend himſelf. But it is on the defendant's ſide that anti-conſcientious practice is moſt likely to be found. Setting expence out of the queſtion, an evil of which theſe

theſe laws are thus far the ſole cauſe, ſetting out of the queſtion the imperfections of the judicial ſyſtem and the hope of ſeeing evidence periſh, or the guilty view of fabricating it, a man will find no motive for inſtituting a ſuit for an ordinary pecuniary demand, without believing himſelf to be in the right: for if he is in the wrong, diſappointment, waſte of time, fruitleſs trouble, and ſo much expence as is naturally unavoidable, are by the ſuppoſition what he knows muſt be his fate. Whereas, on the other hand, a man upon whom a demand of that kind is made, may, although he knows himſelf to be in the wrong, find inducement enough to ſtand a ſuit from a thouſand other conſiderations: from the hope of a deficiency in point of evidence on the part of the plaintiff, not to mention,

as

as before, the rare and criminal enterpriſe of fabricating evidence on his own part: from the hope of tiring the plaintiff out, or taking advantage of caſual incidents, ſuch as the death of witneſſes or parties: from the temporary difficulty or inconvenience of ſatisfying the demand, or (to conclude with the caſe which the weakneſs of human nature renders by far the moſt frequent) from the mere unwillingneſs to ſatisfy it.

In a word, they give a partial advantage to conſcious guilt, on which ever ſide it is found: and that advantage is moſt partial to the defendant's ſide, on which ſide conſciouſneſs of guilt, as we ſee, is moſt likely to be found.

Better, ſays a law maxim ſubſcribed to by every body, better that *ten* criminals ſhould eſcape, than one inno-

cent perſon ſhould ſuffer: and this in caſe even of the deepeſt guilt. For *ten*, ſome read a *hundred*, ſome a *thouſand*. Which ever reading be the beſt, an expedient of procedure, the effect of which were to cauſe ten innocent perſons to ſuffer for every ten guilty ones, would be acknowledged to be no very eligible ingredient in the ſyſtem. What ſhall we ſay of an inſtitution, which for one culpable perſon whom it cauſes to ſuffer, involves in equal ſuffering perhaps ten blameleſs ones.

Thus much for *groundleſs* ſuits: there remains the plea of its tendency to check what are deemed *trivial* ſuits.

I know what a *groundleſs* ſuit means—I know of no ſuch thing as a *frivolous* one.—No wrong that I know of can be a trivial one, which to him to whom it is done appears a ſerious one, ſerious to ſuch a degree, as to make it worth his while to demand

mand redreſs at the hand of juſtice.—Conduct is the teſt of feeling. I know of no right I have to ſet up any feelings of my own as the ſtandard of thoſe of my neighbour, in contradiction to a declaration of his, the truth of which is evidenced by his own conduct. What to one man again is trivial, to another man may be of high importance. In the account of wrong too muſt be included, not only the individual wrong taken by itſelf, but its effects in the way of encouragement to repetition, and its effects in the way of example. I know of no wrong ſo ſlight, that by multiplication may not become intolerable. Give me but a licence to do to any perſon at pleaſure the minuteſt wrong conceivable—I need no more, that perſon is my ſlave. Allow me to rob him though it be but of a farthing,

farthing by farthing, I will find the bottom of his purſe. Allow me but to let fall a drop of water upon his head —*gutta cavat lapidem*, the power of ſtriking his head off would be leſs ſuſceptible of abuſe.

In pecuniary caſes, the ſmaller the ſum in diſpute, the leſs reſerve is uſed in branding the conduct of the parties with the charge of litigation, of which in ſuch caſes the reproach is apt to fall principally if not excluſively, to the plaintiff's ſhare. But the importance of the ſum is altogether governed by the circumſtances of the parties: the amount of it in pounds, ſhillings, and pence ſhews nothing. One man's income may be a hundred, a thouſand, four thouſand times as great as that of another. In England there are men whoſe income exceeds 60,000l. a year. 15l. a year is as much

much as falls to the lot of perhaps the greater number of the whole body of the people. Without a particular caution, a legiſlator or a judge will naturally enough, like any other man, take the relation of the ſum in diſpute to his own feelings, that is, its ratio to its own circumſtances, for the meaſure of importance: but by this ſtandard he will be ſure to be deceived, as often as the circumſtances of the parties, or either of them, are materially different from his own. Fifty pound, for example, will be apt to appear in his eyes an object of conſiderable importance: an object of which a tenth or a twentieth part, or leſs, might be of importance ſufficient to juſtify from the charge of litigation, the maintenance of a ſuit. A ſhilling would be almoſt ſure to appear to him an object altogether trifling; an object by no means

of magnitude enough to warrant the maintenance of a ſuit. Fifty pound is however a ſum of leſs importance to a Duke of Marlborough or Bedford, than a ſingle ſhilling (viz. than a four thouſandth part of 50l.) to many a man, in truth to probably the majority of men in the kingdom. It is therefore more unjuſt, more tyrannical, to refuſe to hear the demand of an ordinary working man to the amount of a ſhilling, than it would be to refuſe to hear the demand of a Duke of Marlborough or Bedford, to the amount of 50l. The legiſlator, who on the plea of checking litigation, or on any other plea, exacts of a working man as a preliminary to his obtaining juſtice, what that working man is unable to pay, does refuſe to him a hearing, does in a word refuſe him juſtice, and that as effectually and

and compleatly, as it is poſſible to refuſe it.

That all men ſhould have *equal rights*, not only would be politically pernicious, but is naturally impoſſible: but I hope this will not be ſaid of *equal juſtice*.

Trivial cauſes require no ſuch factitious checks: to ſuch cauſes were all expences ſtruck off that can be ſtruck off, there are natural checks in abundance, that are unavoidable. There is the pain of diſappointment: there is expence, of which a certain meaſure will every now and then be abſolutely unavoidable: there is conſumption of time, which to the working claſſes, that is to the great majority of the people, is expence.

But even let the cauſe be trivial, and that to ſuch a degree as to render the act of commencing the litiga-

tion blameable, the blame is never ſo great on the ſide of the party moſt favoured by the tax, as on the ſide of the party moſt oppreſſed by it. The party moſt oppreſſed is the complainant: the party who having ſuffered the injury ſuch as it is, claims or would claim ſatisfaction for it at the hands of juſtice. But, ſo as there does but exiſt the ſmalleſt particle of an injury, the party who claims ſatisfaction for it can never be ſo much in the wrong for doing ſo, but that he who refuſes ſatisfaction muſt be ſtill more ſo. If the demand be juſt, why did not he comply with it? If juſt, but trifling, why does he conteſt it? In this caſe then you cannot puniſh in this way the miſconduct of one party, without rewarding ſtill the greater miſconduct of the other. If the tax applies a check where there is blame, it

it affords protection and encouragement where there is ſtill greater blame.

Another injuſtice.—The poorer a man is, the more expoſed he is to the oppreſſion of which this ſuppoſed remedy againſt litigation is the inſtrument. But the poorer a man is, the leſs likely he is to be litigious. The leſs time a man has to ſpare, and the leſs a man can afford to expend his time (not to ſpeak of money) without being paid for it, the leſs likely is he to expoſe himſelf to ſuch a conſumption of his time.

The rich man, the man who has time and money at command, he ſurely, if any, is the man to conſume it litigiouſly and frivolouſly. No wonder however, if to a ſuperficial glance, the poor ſhould appear more litigious than he. There are more of the poor

than of the rich: and to the eye of unreflecting opulence, the cauſes of the poor are all trivial ones.

We think of the poor in the way of charity, for to deal out charity gratifies not only benevolence, but pride. We think much of them in the way of charity, but we think little of them in the way of juſtice. Juſtice, however, ranks before charity: and they would need leſs charity, if they had more juſtice.

What contributes more than any thing to the indignation excited by ſuits that are deemed trivial and, on account of the triviality *vexatious*, is the exceſſive ratio of the expence of the ſuit to the value of the matter in diſpute: eſpecially when, the matter in diſpute being pecuniary, its minuteneſs is more conſpicuous and defined. But to what is this expenſiveneſs

neſs owing?—As far at leaſt as theſe taxes are in queſtion, to the legiſlator himſelf.—Mark then the iniquity. He is himſelf the author of the wrong, and he puniſhes for it the innocent and the injured.

To exclude the poor from *juſtice* was not enough:— they muſt be excluded alſo from *mercy*. Forty ſhillings is the tax impoſed on pardons, by a ſtatute of King William (5. W. c. 21. §. 3.) forty ſhillings more by another, no more than five years afterwards. (9 and 10. W. c. 25. § 3, 50.) Together, 4l.:—half a year's income of a Britiſh ſubject, according to Davevant's computation above quoted. What is called *mercy*, let it be remembered, is in many caſes no more than *juſtice*: in all caſes where the ground of pardon is the perſuaſion of innocence, entertained either notwithſtanding

ing the verdict, or in conſequence of evidence brought to light after the verdict.* All puniſhments are accordingly irremiſſible, to him who has not to the amount of half a year's income in ſtore or credit: all fines to that amount or under, abſolutely irremiſſible.†

Taxes on law proceedings, ſo far then from being a check to litigation, are an encouragement to it in every ſenſe in which it is miſchievous

* For inſtance, the caſe of Mr. Atkinſon.

† It would be curious enough to know what profit the treaſury may have drawn from that time to the preſent, from ſo extraordinary a friend: certainly not enough to pay the ſalary of one of the Lord's Commiſſioners: probably not enough to pay that of his valet de chambre.

Theſe are buſy ſtatutes. By the prohibition and ſale of Juſtice, they ran counter to Magna Charta:—by the prohibition of Mercy, they break the Coronation Oath.

and

and blameable.—Would you really check litigation, and check it on both ſides?—the ſimple courſe would be a ſure one. When men are in earneſt about preventing miſconduct in any line, they annex puniſhment to miſconduct in that line and to that only: a ſpecies of miſconduct which cannot be practiſed but as it were under the eye of the court, is of all others the eaſieſt to cope with in the way of law. Deal with miſconduct that diſplays itſelf under the eye of the court as you deal by delinquency at large, and you may be ſure of ſucceeding to a ſtill ſuperior degree. Diſcriminate miſconduct then from innocence: lay the burthen on miſconduct and miſconduct only, leaving innocence unoppreſſed. Keep back puniſhment, till guilt is aſcertained. Keep back coſts, as much as poſſible, till the laſt ſtage

of

of procedure; keep off from both parties every thing of expence that is not abſolutely unavoidable, where litigation is on both ſides without blame: at that laſt ſtage if there be found blame, throw whatever expence of which you allow the neceſſity to ſubſiſt beyond what is abſolutely unavoidable, throw it on that ſide and on that ſide only, where there has been blame. If on both, then if circumſtances require puniſh it on both ſides, by fine for inſtance to the profit of the public.

Litigation though eventually it prove groundleſs, litigation, like any other courſe of conduct of which miſchief is the reſult, is not therefore blameable: and where it is blameable, there is a wide difference whether it is accompanied with temerity only, or with conſciouſneſs of its own injuſtice. The countenance ſhewn to the parties by

by the law ought to be governed, and governed uniformly and proportionally, by theſe important differences.—So much in point of utility:—how ſtands eſtabliſhment?—Taxes heaped on in all ſtages from the firſt to the laſt without diſtinction:—all coſts given or no coſts, no medium:—coſts ſcarce ever compleat, and nothing beyond coſts.—No mitigation, or enhancement, in conſideration of pecuniary circumſtances. No ſhades of puniſhment in this way correſpondent to ſhades of blame:—in moſt caſes no difference ſo much as between conſciouſneſs of injuſtice and ſimple temerity, nor ſo much as betwixt either and innocence. The power of adjudging as between coſts and no coſts, ſeldom diſcretionary:—that of apportioning, never:—nor that of fining beyond the amount of coſts:—conſequently nor that

that of puniſhing both parties where both have been to blame. Were a power to be given by ſtatute to impoſe on a litigious ſuitor convicted of litigation, a fine to an amount not exceeding what the loſing party pays now whether he be blameable or blameleſs, it would be cried out againſt perhaps as a great power, too great to be given to judges without juries.*

Juſtice

* The diſtinction between temerity and conſciouſneſs of blame, a diſtinction pervading human nature, and applicable to every ſpecies of miſbehaviour, is ſcarce ſo much as known to the Engliſh law. There are ſcarce words for it in the language. *Temerity* is taken from the Roman law. *Malice*, the term by which Engliſh Lawyers ſeem in ſome inſtances to have had in view the expreſſing conſciouſneſs of blame, preſents a wrong idea, ſince in common language it implies *hatred*, an affection which in many inſtances of conſcious guilt, may be altogether wanting :—

Juſtice ſhall be denied to no man, juſtice ſhall be ſold to no man, ſays the firſt

ing:—inſtance offences of mere rapacity, ſuch as theft, robbery, and homicide for lucre.

The legiſlator?—he talk of vexation?—He does every thing to create the evil, he does nothing to remove it.

I happened once to fall into converſation with a man who, from an Attorney, had been made Judge of one of the provinces in America. Juſtice, I underſtood from him, was on a very bad footing there: it might be had almoſt for nothing: the people were very litigious: he found them very troubleſome. A ſummons coſt—I forget whether it was three and ſixpence, or half a crown. Whom the half crown went to I do not know: one may be pretty certain not to the Judge.—Seeing no proſpect of our agreeing, I did not puſh the converſation far. The half crown ſeemed to him too little: to me it ſeemed all too much. The pleaſant thing would have been to have enjoyed the ſalary in peace and quietneſs, without being plagued with a parcel of low people. Juſtice would then have been upon the beſt footing poſ-

of ſtatutes, *Magna Charta.* How is it under theſe later ones?—Denied, as we have ſeen, to nine tenths of the people, ſold to the other tenth at an unconſcionable price. It was a conceit among the old lawyers, reported if not adopted by Lord Coke, that a ſtatute made contrary to *Magna Charta*, though made in all the forms, would be a void law. God forbid, that by all the lawyers in the world, or for the purpoſe of any argument, I ſhould ever ſuffer myſelf to be betrayed into any ſuch extravagance: in a ſubject it would be ſedition, in a judge it would be uſurpation, in any body it would be nonſenſe. But after all it muſt be acknowledged, to be in ſome degree un-

ſible. He had accordingly a project for checking litigation by raiſing the fees. I don't know whether it ſucceeded.

fortunate,

fortunate, as well as altogether ſingular, that, of an inſtrument deemed the foundation of all liberty, and magnified as ſuch even ſtill, to a degree of fanaticiſm, a paſſage by far the moſt important, and almoſt the only one that has any application now a days, ſhould be thus habitually trodden under foot, without remorſe or reclamation.*

* Let us not for the purpoſe of any argument, give riſe or countenance to injurious imputations. Though juſtice is partly denied, and partly ſold, the difference is certainly immenſe, betwixt ſelling it for the perſonal benefit of the king or of a judge, and ſelling it for the benefit of the public:—betwixt ſelling it by auction, and ſelling it at a fixed price:—betwixt denying it for the ſake of forcing the ſale of it, or denying it to a few obnoxious individuals, and denying it indiſcriminately to the great majority of the people. In point of moral guilt, there is certainly no compariſon: but in point of political effect, it may not be altogether eaſy in every

A tax ſo impolitic and ſo grievous, a tax thus demonſtrated to be the worſt of taxes, how comes it ever to have been made choice of, and when made choice of, acquieſced in?—Theſe are not queſtions of mere curioſity: for acquieſcence under a tax, and that ſo general, forms at firſt glance no inconſiderable preſumption in its favour. A preſumption it does form; but when demonſtration has ſhewn itſelf, preſumptions are at end.

How comes the tax to have been made choice of?—One cauſe we have ſeen already in another ſhape; the unſcrutinized notion of its ſuppoſed tendency to check *litigation*: litigation, which where it ſtands for miſchief, is the very miſchief which the

part of the parallel, to ſay which mode of abuſe is moſt extenſively pernicious.

ſpecies

ſpecies of tax in queſtion contributes with all its power to promote.

Another cauſe may poſſibly be, the tendency which this ſort of tax has to be confounded in the eye of an incurious obſerver, with other ſorts, which are either the beſt of all, or next to the beſt. The beſt of all are taxes on conſumption, becauſe they not only fall no where without finding ſome ability to pay them, but that where neceſſaries are out of the queſtion, they fall on nobody who has not the option of not paying them if he does not chooſe it. Taxes on property, and thoſe on transfer of property, ſuch as thoſe on contracts relative to property, are the next beſt: becauſe though they are not optional like the former, they may be ſo ſelected as never to call for money but where there is ability, nay even ample abi-

lity, to pay them. Now of theſe two moſt ſupportable claſſes of taxes, the ſecond are all of them levied by means of *ſtamps*: taxes on conſumption too, in many inſtances, ſuch as thoſe on cards, dice, gloves, and perfumery, ſhow to the eye as ſtamp-duties. But all theſe are very good taxes. Stamp-duties therefore are good taxes: and taxes on juſtice are all ſtamp-duties.—Thinking men look to conſequences; they look to the feelings of the individuals affected: acting men look to the ſtamp: taxes on juſtice, taxes on property, taxes on conſumption are accordingly one and the ſame object to the optics of finance. Stamp-duties too have another moſt convenient property, they execute themſelves, and law taxes beyond all others: in ſhort they exclude all ſmuggling.*

* Law paper might be forged: but the difficulty would be to iſſue it.

They

They heap diſtreſs indeed upon diſtreſs: but the diſtreſs is not worth minding, as there is no eſcaping it.

But the great cauſe of all is the proſpect of acquieſcence: a proſpect firſt preſented by hope, ſince realized over and over again by experience. It is too much to expect of a man of finance, that he ſhould anticipate the feelings of unknown individuals: it is a great deal if he will liſten to their cries. Taxes on conſumption fall on bodies of men: the moſt inconſiderable one when touched will make the whole country ring again. The oppreſſed and ruined objects of the taxes on juſtice, weep in holes and corners, as rats die; no one voice finds any other to join with it.

A tax on ſhops, a tax on tobacco, falls upon a man if at all immediately, and preſſes on him conſtantly: every man knows whether he keeps or

means to keep a ſhop, whether he means to ſell or to uſe tobacco. A tax on juſtice falls upon a man only occaſionally: it is like a thunder ſtroke, which a man never looks for till he is deſtroyed by it. He does not know when it will fall on him, or whether it ever will: nor even whether, when it does fall, it will preſs upon *him* moſt, or upon his adverſary. He knows not what it will amount to: he has no *data* from which to calculate it: it comes lumped to him in the general maſs of law charges: a heap of items among which no vulgar eye can ever hope to diſcriminate: an object on which inveſtigation would be thrown away, as comprehenſion is impoſſible. Calamities that are not to be averted by thought, are little thought of, and it is beſt not to think of them. When is the time for complaint? Before the thunder-bolt is fallen

fallen, it would be too ſoon: when fallen, it is too late. Shopkeepers, tobacconiſts, glovers, are compact bodies: they can arm council: they come in force to the Houſe of Commons. Suitors for juſtice have no common cauſe, and ſcarce a common name: they are every body and nobody: their buſineſs being every body's is nobody's. Who are ſuitors? where are they? what does a Chancellor of the Exchequer care for them? what can they do to help him? what can they do to hurt him? So far from having a common intereſt, they have repugnant intereſts: to cruſh the injured, is to befriend the injurer.

May not ignorance with regard to the quantum and the ſource of the grievance, have contributed ſomething to patience?—Unable to pierce the veil of darkneſs, that guards from vulgar

vulgar eyes the avenues of juſtice, men know not how much of the difficulty of the approach is to be aſcribed to art, and how much to nature. As the conſumers of tobacco confound the tax on that commodity with the price, ſo thoſe who borrow or would have wiſhed to borrow the hand of juſtice, confound the artificial with the natural expence of hiring it. But if the whole of the grievance be natural, it may be all inevitable and incurable, and at any rate it may be no more the fault of lawyers or law makers, than gout and ſtone are of phyſicians.—Happy ignorance!—if blindneſs to the cauſe of a malady could blunt the pain of it!

There want not apologiſts-general and talkers in the air, to prove to us that this as well as every thing elſe, is as it ſhould be. The expence, the delay, and all the other grievances, which

which activity has heaped, or negligence ſuffered to accumulate, are the prices which, according to Monteſquieu, we muſt be content to pay for liberty and juſtice. A penny is the price men pay for a penny loaf: therefore why not two-pence? and, if threepence, there would be no harm done, ſince the loaf would be worth ſo much the more.

May not a ſort of inſtinctive fellow-feeling among the wealthy have contributed ſomething, if not to the impoſition, at leaſt to the acquieſcence? It is the wealthy alone, that either by fortune, ſituation, education, intelligence, or influence, are qualified to take the lead in legiſlation: and the characteriſtic property of this tax, is to be favourable to the wealthy, and that in proportion to their wealth. Other taxes afford a man no indemnification for the wealth they take from him;

him: thisgives him power in exchange. The power of keeping down thoſe who are to be kept down; the power of doing wrong, and the more generous pride of aſtbaining from the wrong which is in our power, are advantages too precious not to be graſped at with avidity by human weakneſs: and as in a country of political liberty, and under a ſyſtem of juſtice in other reſpects impartial, they can only be obtained by a blind and indirect route ſuch as this, the inconvenience of travelling in it, finds on the part of thoſe who are well equipped for it, the more patient an acquieſcence.

Will it be ſaid that aboliſhing the taxes on juſtice would not anſwer the purpoſe, for that ſuppoſing them all aboliſhed, juſtice would ſtill remain inacceſſible to the body of the people? —This would be to juſtify one abuſe by

by another. The other obſtacles by which the avenues to juſtice have been blocked up, conſtitute a ſeparate head of abuſe, from which I gladly turn aſide, as being foreign to the preſent purpoſe. Take off law taxes all together, the number of thoſe to whom juſtice will ſtill remain inacceſſible, would ſtill, it muſt be confeſſed, be but too great. It would however not be ſo great, as it is at preſent under the preſſure of thoſe taxes. Though you could not tell exactly to how many you would open the doors of juſtice, you might be ſure you opened them to ſome. Though you would ſtill leave the burthen but too heavy, you would at any rate make it proportionably more ſupportable.

If by taking off theſe taxes, you reduced the expence of a common action from 25l. to 20l, you might open the door, ſuppoſe, to one in five of thoſ

thoſe againſt whom it is ſhut at preſent. Even this would be ſomething: at any rate whatever were the remaining quantum of abuſe, which you ſtill ſuffered to ſubſiſt, you would have the conſolation at leaſt of not being actively inſtrumental in producing it. To reform *in toto* a ſyſtem of procedure is a work of time and difficulty, and would require a rare union of legal knowledge with genius: as repealing a tax may require diſcernment, candour, philanthropy, and fortitude, but is a work of no difficulty, requires no extraordinary meaſure of ſcience, nor even ſo much time as the impoſing of one.

But by whatever plea the continuance of the ſubſiſting taxes of this kind may be apologized for, nothing can be ſaid in favour of any new addition to the burthen. The ſubſiſting ones, it may be ſaid, have been acquieſced in, and men are uſed to them: to

in this reſpect at leaſt they have the advantage of any new ones which could be ſubſtituted in the room of them. But even this immoral plea, which puts bad and good upon a level, effacing all diſtinction but that between *eſtabliſhed* and not *eſtabliſhed*, even this faint plea, is mute againſt any augmentation of this worſt of evils.

To conclude—Either I am much miſtaken, or it has been proved—that a law tax is the worſt of all taxes actual or poſſible:—that for the moſt part it is a denial of juſtice, that at the beſt it is a tax upon diſtreſs:—that it lays the burthen, not where there is moſt, but where there is leaſt, benefit:—that it co-operates with every injury, and with every crime:—that the perſons on whom it bears hardeſt, are thoſe on whom a burthen of any kind lies heavieſt, and that they compoſe the great majority of the people:—that ſo far from being a check,

a check, it is an encouragement to litigation: and that it operates in direct breach of Magna Charta, that venerable monument, commonly regarded as the foundation of Engliſh liberty.

The ſtateſman who cares not what miſchief he does ſo he does it without diſturbance, may lay on law taxes without end: he who makes a conſcience to abſtain from miſchief will abſtain from adding to them: he whoſe ambition it is to extirpate miſchief, will repeal them.

General error makes law, ſays a maxim in uſe among lawyers. It makes at any rate an apology for law: but when the error is pointed out, the apology is gone.

FINIS.

The Reader is requeſted to correct the paging of the ſecond ſheet, which ſhould have begun 17 inſtead of 33, and in page 40, line 4, of that ſheet, dele the word "*may*."

ESCHEAT

VICE

TAXATION.

§ 1. GENERAL IDEA.

IN a former Eſſay,* I pointed out the ſpecies of tax which, if the reaſoning there given be juſt, is the *worſt* of all taxes exiſting or poſſible. The object of the preſent Eſſay is,

* Proteſt againſt Law Taxes, printed 1793, now firſt publiſhed, and ſubjoined to the preſent Eſſay, Dec. 1795.

to point out that mode of ſupply which, for one of ſo great a magnitude, will, I flatter myſelf, appear to be abſolutely the *beſt*.

What is that mode of ſupply, of which the twentieth part is a tax, and that a heavy one, while the whole would be no tax, and would not be felt by any body?

The queſtion has the air of a riddle; but the propoſition it involves, paradoxical as it may appear, is not more ſtrikingly paradoxical than ſtrictly true.

The anſwer is—an extenſion of the exiſting Law of *Eſcheat*; a law coeval with the very firſt elements of the conſtitution: to which I would add, as an aid to its operation, a correſpondent *limitation*, not an *extinction*, of the power of *bequeſt*.

Of

Of the extended Law of Eſcheat, according to the degree of extenſion here propoſed, the effect would be, the appropriating to the uſe of the public all vacant ſucceſſions, property of every denomination included, on the failure of *near relations*; will or no will, ſubject only to the power of bequeſt as hereinafter limited.

By near relations I mean, for the purpoſe of the preſent propoſal, ſuch relations as ſtand within the *degrees* termed *prohibited* with reference to marriage.

As a farther aid to the operation of the law, I would propoſe, in the inſtance of ſuch relations *within the pale*,* as are not only childleſs, but *with-*

* To ſave circumlocution, relations whom, under this or any other definition of *near* relations,

*without proſpect of children,** whatever ſhare they would take under the exiſting law, that, inſtead of taking that ſhare in *ready money*, they ſhould take only the intereſt of it, in the ſhape of an *annuity for life.*

It would be a farther help to the operation of the meaſure, and (if confined to the caſes where from the nature of the relationſhip the ſurvivor is not likely to have grounded his plans of life upon the expectation of the ſucceſſion, or otherwiſe to have placed any determinate dependence

tions, I ſhould propoſe to exclude, I ſhall term relations *without the pale*; thoſe whom I ſhould propoſe *not* to exclude, relations *within* the pale.

* Say, in the inſtance of females, 48; in the inſtance of males, 60, if no child within five years paſt; or 55, if married to a wife above 48.

on

on it) may ſcarcely if at all be felt, if in ſuch inſtances, although the relationſhip be *within* the pale, the public were to come in for a ſhare in the ſucceſſion, (ſuppoſe an *equal* ſhare) though not the whole. This may be applied to the caſe of the uncle and aunt, to the caſe of the grandfather and grandmother, and, perhaps, unleſs under particular circumſtances, to the caſe of the nephew and niece.

With regard to *family ſettlements*, the perſons whoſe benefit they have in view will be found provided for with few or perhaps no exceptions, by the reſervations made in this plan in favour of relations *within the pale.* To make proviſion for the caſes where, in virtue of an old ſettlement, an eſtate might devolve to a relation *without the pale*, I would

pro-

propoſe to add a proviſo, that wherever the deceaſed, had he been of full age, could, by his ſingle act, have cut off the entail, it ſhall be as if he had actually done ſo, for the purpoſe of excluding the diſtant relative. This in the inſtance of ſettlements already *exiſting*; as to future ones, there will be ſtill leſs difficulty about confining *their* operation within the range meant to be allowed them by the ſpirit of the propoſed law.

Regard to the principles of the conſtitution, not leſs than to the probability of carrying the meaſure through the Upper Houſe, would at the ſame time incline me to exempt the Peerage from its operation, whereever the effect would be, to deprive the title of any property which, un-

der the exiſting law, would go to the ſupport of it.

As to the latitude to be left to the power of *bequeſt*, I ſhould propoſe it to be continued in reſpect of the *half* of whatever property would be at preſent ſubject to that power: the wills of perſons in whoſe ſucceſſion no intereſt is hereby given to the public, to be obſerved in all points as at preſent; as, likewiſe, thoſe in whoſe ſucceſſion an intereſt *is* given to the public, ſaving as to the amount of that intereſt: the plan conſequently not trenching in any degree upon the rights of parents.*

To

* Many writers (Blackſtone for one) have treated the right of bequeſt with very little ceremony: many writers, without having in view any ſuch public benefit as is here in queſtion, have been for aboliſhing it altogether: [the

To give the plan its due effect, it will be ſeen to be indiſpenſably neceſſary,

[the author of the Code Frederic, for inſtance; Cocceiji, chancellor to the late King of Pruſſia: ſee the Preface to that work.] Without entering into a diſcuſſion which is not to the preſent purpoſe, it will be ſufficient here to obſerve, that not only the regard due to old eſtabliſhed privileges and long-exiſting uſages, but the ſucceſs of the very ſyſtem here propoſed, though eſtabliſhed in ſo great a degree at the expenſe of the power in queſtion, may depend upon the leaving that power in poſſeſſion of a very conſiderable degree of force. If a man were allowed no power at all over what property he left behind him, he would, in many inſtances, either be indifferent about getting it, or ſpend it as faſt as he got it, or transfer it to ſome happier clime, where the intereſts of the community were better underſtood, and the feelings of individuals treated with more reſpect; and, in fact, a great part of the value of all property would thus be deſtroyed.

So

ceſſary, in the firſt place, that the whole property, in which the public ſhall thus have acquired an intereſt, ſhall, whatever it conſiſts of, be converted into *ready money:* property in the funds alone excepted, from which the public cannot reap ſo great a

So much as to the aboliſhing the power altogether: as to the narrowing it in the manner here propoſed, ſhould that be objected to as too great a hardſhip, let it be conſidered that the defalcation thereby propoſed to be made from the powers of proprietors in general, falls ſhort, by much more than half, of the quantum of reſtriction impoſed, by the terms of marriage ſettlements, on the deſcription of proprietors whoſe lot in point of property is moſt envied, the great body of the nobility and landed gentry. In this plan, there is nothing to preclude a man from *charging* his eſtate—from *changing the nature* of it as often as he pleaſes—from *improving* any part by ſelling or charging another—or from *giving* or *ſpending* it in his life-time.

C benefit

benefit in any other way, as by the ſinking of ſo much of its debt in the firſt inſtance: in the next place, that, to prevent colluſive undervaluation, and the ſuſpicion of it, the converſion ſhall, in every inſtance, be performed in the way of *public auction*. As to the reaſons for ſuch converſion, they are tolerably apparent on the face of the propoſition; and they will be detailed in their proper place.

What will alſo be ſeen to be neceſſary is, that, wherever the public has any intereſt at all in any ſucceſſion under the propoſed law, the officer of the public, that is, the officer of the Crown, ſhall enter into the poſſeſſion and management of the whole in the firſt inſtance, in the ſame manner as aſſignees of bankrupts do in reſpect of the whole property,

perty, *real* and *perſonal*, together, or adminiſtrators or executors do in reſpect of the perſonalty: not to mention the *real* in ſome caſes, as where, by a clauſe in the will, it is ordered to be ſold.

Of the ſeveral extenſions above propoſed, it may be obſerved, that, though they operate, all of them, to the augmentation of the produce, and, in ſo far at leaſt to the *utility* of the meaſure, yet are they not, any of them, ſo indiſpenſably *neceſſary* to its adoption, but that they may be ſtruck out or modified, or even added to, by farther extenſions, and the principle of the plan ſtill adopted—the eſſence of it ſtill preſerved.

It may be a ſatisfaction to ſee, at this early ſtage of the inquiry, the principles by which the *extent* that may with propriety be given to this

reſource, appears to be marked out and limited. The propoſitions I would propoſe in that view are as follows:

I. Whatever power an individual is, according to the received notions of *propriety*, underſtood to poſſeſs in this behalf, with reſpect to the diſpoſal of his fortune in the way of *bequeſt*—in other words, whatever degree of power he may exerciſe, without being thought to have dealt *hardly* by thoſe on whom what he diſpoſes of would otherwiſe have devolved—that ſame degree of power the law may, for the benefit of the public, exerciſe once for all, without being conceived to have dealt *hardly* by any body, without being conceived to have *hurt* any body, and, conſequently, without ſcruple: and even though the money ſo raiſed would *not* other-

otherwiſe have been to be raiſed in the way of taxes.*

II. Any

* If without provocation on the part of my *children*, I were to let in ſtrangers or mere collateral relations for an equal ſhare of my fortune, my children would feel themſelves injured, other people would look upon them as injured, my behaviour to them would be univerſally regarded as cruel and unnatural. A man is conſidered, indeed, as having his own fortune pretty much in his power, as againſt one child in compariſon of another, but very little ſo as againſt his children taken together in compariſon with collaterals or ſtrangers. How ſtands it with regard to *nephews* and *nieces?* Is he conſidered as lying under the ſame reſtraint with regard to *them?* No, nor any thing like it. If it be his pleaſure to give them all, ſo he may, they being his neareſt relations, and without being thought to do amiſs by any body elſe: but ſhould it on the other hand be his pleaſure to prefer to them a ſet of individual friends, or a public inſtitution, ſay with reſpect to half, yet, ſo as he does but leave them the other half, they will ſcarcely be looked upon

II. Any further power which could be exerciſed in this way to the profit of the public purſe, and of which the exerciſe, though not altogether clear of the imputation of producing a ſenſe of hardſhip, would at the ſame time be productive of *leſs* hardſhip than the lighteſt tax that could be ſubſtituted in the room of it, ought, if the public mind can be ſufficiently reconciled to it, to be exerciſed in preference to the eſtabliſhment of any tax.

upon as ill uſed. Had he, indeed, exerciſed no ſuch power at all over his property, had he ſuffered the law in this behalf to take its own courſe, they would, it is true, have got the whole. But why?—only becauſe ſomebody muſt have it, and as they ſtand neareſt, there is nobody elſe to take it. I ſay nothing here of brothers and ſiſters, fathers and mothers, uncles and aunts, grandfathers and grandmothers; they would lead me too far into details.

III. A

III. A power thus exerciſed in favour of the public purſe, would go beyond the latitude given by the firſt rule, and would accordingly be productive of a ſenſe of hardſhip, in as far as it went the length of producing in any degree any of the following effects, viz.

1. If it extended to the prejudice of the joint poſſeſſion cuſtomarily enjoyed by a man's *natural* and neceſſary *dependents*, ſuch as *children*, and thoſe who ſtand in the place of children.

2. If it went to the bereaving a man of the faculty of continuing after his death any ſupport he had been in the habit of affording to *relatives* of any other deſcription, whoſe claims to, and dependence on ſuch ſupport, are, by reaſon of the nearneſs of the relationſhip, too ſtrongly rooted in

nature and opinion, to be capable of being diſſolved by the diſpenſations of law.

3. If, by putting it out of the power of a relation of parental age to receive, at the death of a relation of inferior age, an adequate indemnification for requiſite aſſiſtance given in the way of *nurture*, it threatened, by leſſening the inducements, to leſſen the prevalence of ſo uſeful a branch of natural benevolence.

4. If it went to the bereaving a man of the faculty of affording an adequate *reward for meritorious ſervice*, of whatſoever nature, and by whomſoever rendered, leſſening thereby the general diſpoſition among men to the rendering of ſuch ſervice.

5. The effect of ſuch an extenſion of the propoſed power would be purely miſchievous, if what were gained thereby

thereby on one hand by the augmentation of the ſhare taken into the hands of government, at the expenſe of the power of bequeſt, were to be loſt on the other hand by a proportionable diminution effected in the whole maſs of property in the country, in conſequence of the diminution of the inducements to accumulate, and lay up property, inſtead of ſpending it.

6. The public mind muſt in this inſtance, as in every other, be at any rate treated with due deference. In this inſtance, as in every other, a law, however good in itſelf, however good on the ſuppoſition of acquieſcence, may become bad in any degree by unpopularity; by running too ſuddenly and directly againſt opinions and affections that have got poſſeſſion of mankind.

Thus much for the rules that may ſerve for our guidance, in adjuſting the extent that may be given to this reſource. They may be truſted, it ſhould ſeem, for the preſent at leaſt, to the ſtrength of their own ſelf-evidence. The application of them to practice, the application of them to the ſeveral modes and degrees of relationſhip, and to the ſeveral ſituations and exigencies of families, is matter of detail, that will meet us in its proper place.

§ 2. ORDER

§ 2. ORDER OF THE DETAILS.

IN continuing the thread of this propoſal, the following is the courſe propoſe to take—

1. To give a brief view of the *aadvantages* or beneficial properties that appear to recommend the meaſure to the adoption of government—

2. To ſhew how *diſtinct* it is in reality from all taxes on *collateral ſucceſſions*, which have ever been eſtabliſhed or propoſed, and how much the diſtinction is to its advantage—

3. To exhibit the beſt idea I am capable of giving, of the probable amount of the *produce* that may be expected from it—

4. I ſhall add a few obſervations, relative to the moſt eligible *application* to be made of that produce.

Deſcending further into detail,*

5. I ſhall give a more particular view of ſuch *regulations* as may ſeem proper to be inſerted for the purpoſe of applying to practice the principles already exhibited.

6. I ſhall attempt a ſketch of an *official eſtabliſhment* for the *collection* of the produce.

7. I ſhall conſider the meaſure with reference to the caſes where the

* The matter belonging to the enſuing heads is not all of it included in the preſent publication. No part of it was ſent, the demand for it depending upon the approval or diſapproval of the principle of the meaſure; nor has it ever been thought worth while to work up into form any more than is here ſubjoined. Note added in Dec. 1795.

in-

intereſts of individuals belonging to nations altogether *foreign*, or nations *co-ordinate* with or *ſubordinate* to the Britiſh, are concerned.

8. I ſhall conſider it with reference to the caſes where the *property* in queſtion happens to be *ſituated* any where *without* the limits of the laws of Great Britain.

9. I ſhall attempt a general ſketch of a *plan* for the *collection* of the produce: in the courſe of which attempt I ſhall have occaſion to advert to the differences that may be ſuggeſted by the *nature* of the *property* which may come to be collected: to the means of guarding againſt *concealments*, and other *frauds*, to which the property in its ſeveral ſhapes may be expoſed, on the part of ſuch individuals whoſe intereſt or affections may be at variance, in this behalf, with the in-

tereſt

tereſt of the public; as alſo againſt any ſuch *abuſes of power* and other *miſmanagements*, as the ſervants employed on behalf of the public in this buſineſs, ſtand expoſed, by their reſpective ſituations, to the temptation of being chargeable with.

In a ſort of Appendix, which thoſe who may find themſelves already ſatisfied with the principle of the mode of ſupply, may ſpare themſelves the trouble of looking into,

10. I ſhall defend the propoſed inſtitution againſt every *objection*, which my imagination can repreſent to me, as capable of preſenting itſelf.*

* Heads of objections, with anſwers, were ſent, in form of a table, and being now printed *verbatim*, form the matter of one of the enſuing ſections.—Note added Dec. 1795.

11. I

11. I ſhall ſhew that a latitude, much beyond what is here propoſed to be aſſumed, ſtands warranted by the *opinions* of the moſt reſpected writers.

12. That it is equally warranted by *precedent*, that is, by the diſpoſition of law in this country from the primitive ages of the conſtitution down to the preſent times.

13. Laſtly, in the way of ſupplement to the refutation of the ſeveral imaginable objections to the propoſed meaſure, I ſhall endeavour to give a comprehenſive idea of the ſeveral *effects*, as well immediate as remote, that appear any way likely to reſult from it, conſidered in every imaginable point of view.

§ 3. AD-

§ 3. ADVANTAGES.

THE advantageous properties of the propoſed reſource may be ſtated under the following heads, viz.

1. Its unburthenſomeneſs—
2. Its tendency to cut off a great ſource of litigation—
3. Its favourableneſs to marriage—
4. Its probable popularity on that ſcore.

Its *unburthenſomeneſs*, which is the grand and tranſcendent advantage, is not matter of ſurmiſe: it is teſtified by experience: it is confirmed, as we ſhall ſee, by the moſt indiſputable principles of human nature: by the

fundamental conſtitution of the human feelings.

I. It is teſtified by *experience*. On the deceaſe of my uncle, who had children before I was born, the law gives every thing to his children, nothing to me.—What do I ſuffer from finding myſelf thus debarred? Juſt nothing:—no more than at the thoughts of not ſucceeding to the ſtranger whoſe hearſe is paſſing by.

What more ſhould I ſuffer, if my uncle's property, inſtead of going to his children, were known before hand to go the public? In point of perſonal feeling at leaſt, nothing: ſympathy for my couſins, in the caſe of their being left deſtitute, is a different concern.

Living under the law of England, I find myſelf debarred from a ſucceſſion, in which I ſhould have ſhared,

had I lived under the Law of Spain. What do I ſuffer at hearing this?—Juſt nothing: no more than I ſuffer at the thoughts of not being King of Spain. But if the law of England were to be changed in this behalf in conformity to the meaſure propoſed, what is now the exiſting law would to me be no more than the law of Spain.

My father gets an office: upon his deceaſe, the office goes to the nominee of the King from whom he got it, not to me. Do I regard the ſucceſſor as an intruder?—Do I feel his taking poſſeſſion of the office as a hardſhip upon me?—No more than I do his Majeſty's having ſucceeded to the crown inſtead of me.

Under the *exiſting* Law of Eſcheat, real property, on the abſolute failure of all heirs, lapſes to the crown

already. Is there any thing of hardſhip felt by *any* body?—If there were, it would be a cruel hardſhip, for it would be felt by *every* body.* Give to this branch of the law the extent propoſed, confining it always within the bounds above traced out, and it will be even then as unburthenſome as it is now.

Thus ſtands the reſource in point of unburthenſomeneſs as demonſtrated by experience: What does ſo ſingu-

* I leave out of the ſuppoſition, the caſe where there is a father left, a grandfather, or a relation of the half blood, and the eſtate eſcheats to their prejudice. Theſe are but too real hardſhips; but they belong to the law in its preſent ſtate, were ingrafted into it by accident, and would not continue in it in its propoſed extended ſtate, if the choice depended upon me. Thus much muſt be acknowledged: the removal of them is a ſeparate queſtion, bearing no neceſſary relation to the preſent meaſure.

lar a property turn upon? —Upon a moſt ſimple and indiſputable principle in human nature: the feeling of *expectation.* In the caſe of acquiring or not acquiring, of retaining or not retaining, no hardſhip without previous expectation. *Diſappointment* is expectation thwarted: in the diſtribution of property no ſenſe of hardſhip but in proportion to diſappointment. But expectation, as far as the law can be kept preſent to men's minds, follows with undeviating obſequiouſneſs the finger of the law. Why ſhould I ſuffer (bodily diſtreſs from want out of the queſtion) why ſhould I ſuffer, if the property I call *mine,* and have been uſed to regard as mine, were to be taken from me? —For this reaſon and no other—becauſe I *expected* it to continue with me. If the law had predetermined, the

the property I am now uſing as mine, ſhould, at the arrival of the preſent period ceaſe to be mine, and this determination of the law had been known to me before I began to treat it as mine, I ſhould no longer have *expected* to be permitted to treat it as mine: the ceaſing to poſſeſs it, the ceaſing to treat it as mine, would be no *diſappointment,* no hardſhip, no loſs to me. Why is it, that I do not ſuffer at the reflection that my neighbour enjoys his own property and not I?—Becauſe I never *expected* to call it mine. In a word:—In matters of property in general, and ſucceſſion in particular, thus then ſtands the caſe: *hardſhip* depends upon *diſappointment*; *diſappointment* upon *expectation*; *expectation* upon the diſpenſations, meaning the *known* diſpenſations of the law.

The

The riddle begins to ſolve itſelf:—a part taken, and a ſenſe of burthen left; the whole taken and no ſuch effect produced:—the effect of a part greater than the effect of the whole: the old Greek paradox verified, a part greater than the whole.*—Suffer a maſs of property in which a man has an intereſt to *get into his hands*, his expectation, his imagination, his attention at leaſt, faſtens upon the whole. Take from him afterwards a part, let it be ſuch a part and no other, as at the time of his beginning to know that the whole was to come into his hands, he knew that he would have to quit, ſtill, when the time comes for giving it up, the parting with it cannot but excite ſomething of the ſenſation of a *loſs*: a

* ——πλεον ημισυ παντος.

ſen-

ſenſation, which will of courſe be more or leſs pungent, according to the tenacity of the individual.—*Ah! why was not this mine too!—Ah why muſt I part with it! Is there no poſſible means of keeping it? Well, I will keep it as long as I can, however: and perhaps the chapter of accidents may ſerve me.*—Take from him, now, (I ſhould ſay, not *take*) but *keep* from him the whole, ſo keeping it from him that there ſhall never have been a time when he expected to receive it, all hardſhip, all ſuffering, is out of the caſe; if he *were* a ſufferer, he would be a ſufferer indeed; he would be a ſufferer for every atom of property in the world poſſeſſed by any body elſe; he would be as miſerable as the world is wide.* Under

* *Better to have nothing than to have a ſhare? (ſays an objector) How can that be?—Is not the man*

Under a tax on ſucceſſions, a man is led in the firſt place to look upon the whole in a general view as his own: he is then called upon to give up a part. His ſhare amounts to ſo

man himſelf the beſt judge?—Aſk him then, which is beſt for him, ſhare or no ſhare? My anſwer is—the queſtion does not meet the caſe. You ſuppoſe his attention previouſly drawn to the ſubject; you have raiſed his expectation; you have given him his option between *ſome* and *none*: that being the caſe, his anſwer, it is true, cannot but be as you ſuppoſe.—Not to come in for any thing would now be a diſappointment: It will even be a diſappointment, ſhould the ſhare he gets, prove ſmaller than what he hoped to get: and the diſappointment will be not leſs but greater, if he gets no ſhare at all. True; but all this depends upon the *option*: accordingly, in the caſe *you* ſuppoſe, there *is* an option given; whereas, in the caſe *I* ſuppoſe, there is *none*. When an eſtate in England has been limited away from a man altogether, he never looks at it: what ſhould lead him?—he has no more option in it than in the kingdom of Spain.

much

much: this ſhare he is to *have*; only out of it, he is to *pay* ſo much *per cent*. His imagination thus begins with embracing the *whole*: his expectation faſtens upon the whole: then comes the law putting in for its *part*, and forcing him to quit his hold. This he cannot do without pain; if he could, no tax at all, not even a tax on property, would be a burthen: neither land-tax nor poor's rate could be too high.*

The utility of that part of the propoſal which gives to the public officer poſſeſſion of the whole, whether the

* Try the experiment upon a hungry child: give him a ſmall cake, telling h m after he has got it, or even before, that he is to give back part of it. Another time give him a whole cake, equal to what was left to him of the other and no more, and let him enjoy it undiminiſhed—will there be a doubt which cake afforded him the pureſt pleaſure?

F public

public in concluſion is admitted to the whole, or only to a part, may now be ſeen in full force. It is a proviſion not more of *prudence* with a view to the public, than of *tenderneſs* with a view to the individual. Had he been ſuffered to *lay his hands* upon the *whole*, being afterwards, or even at the time, called upon to *give* up a *part*, his attention would unavoidably have graſped the whole, the giving up the part would have produced a ſenſation, fainter perhaps, but ſimilar to that produced by an unexpected *loſs*: on the other hand, as according to the propoſal, he *takes* nothing that he does not *keep*, no ſuch unpleaſant ſenſation is produced.

The caſe, where the individual ſees a ſhare go from him, for the benefit of the public, in the way of *partition*, ſtands in this reſpect, between the caſe

caſe where the public is let into the whole, and that where a part is taken from him in the way of a *tax*. Whether on this plan of partition, the individual ſhall feel in any degree the ſenſation of a loſs, will depend partly upon the *mode of carving out* the ſhare, partly upon the *proportion* taken by the law, partly after all upon the temper and diſpoſition of the individual. As to the *mode of carving*, the whole ſecret lies in taking the public officer, and not the individual, for the *carver*, for the reaſons that have been ſeen. As to the *proportion*, to come back to the paradox, the larger the ſhare of the public, the better; even with reference to his feelings: for the larger it is, the more plainly it will ſhew as a *civil* regulation in matters of ſucceſſion: the ſmaller, the more palpably it will have the air of a *fiſcal*

impoſition, the more it will feel in ſhort like a *tax*. The more is taken under the name of a tax, the more burthenſome the meaſure, as every body knows: at the ſame time the more is taken for the public under the name of *partition*, ſo long as an equal, or not much more than equal, ſhare is left to the individual, the farther the meaſure from being burthenſome: becauſe the farther from being conſidered as a tax. The Roman Tax of 5 *per cent.* on collateral ſucceſſions was conſidered as a heavy burthen: a tax of 50 *per cent.* impoſed under the name of a tax would have been intolerable. At the ſame time, paſs inſtead of the tax a law of inheritance, giving the public 50 *per cent.* upon certain ſucceſſions, the burthen may be next to nothing: paſs a law of inheritance giving the

public the whole, the burthen vaniſhes altogether. The dominion of the imagination upon the feelings is unbounded: the influence of names upon the imagination is well known. Things are ſubmitted to without obſervation under one name, that would drive men mad under another. Juſtice is denied to the great bulk of the people by law taxes, and the blind multitude ſuffer without a murmur: were the diſtribution of juſtice to be prohibited in name, under a penalty to the amount of a tenth part of the tax, Parliament would be blown into the air, or thrown into a mad-houſe.

Would it be better then, upon the whole, for the public to take *all*, and let no relation in for a ſhare?—Certainly not in every caſe. The law is powerful here: but even *here* the law is not abſolutely omnipotent. It can

govern

govern *expectation* abſolutely; meaning always in as far as it makes itſelf preſent to the mind: it can govern expectation abſolutely; but governing expectation is not every thing. It may prevent me from being *diſappointed* at not having bread to eat: but if, by preventing my having bread to eat, it ſtarves me, it will not prevent me from ſuffering by being ſtarved. It can ſave me in this way from *ideal hardſhip*, but not from *corporal* ſufferance. It can ſave me from diſappointment at not *beginning* to enjoy: but it cannot ſave me from diſappointment at not *continuing* to enjoy, after the habit of enjoyment has grown upon me. Hence the neceſſity of conſulting the rules of precautionary tenderneſs that have been exhibited above.

Unburthen-

Unburthenſomeneſs is a praiſe that belongs to this mode of ſupply in another point of view:—with reference to the buſineſs of *collection*. In many inſtances ſo great is the incidental burthen accruing from this ſource, as almoſt to rival in real magnitude, and even eclipſe in apparent magnitude, the principal burthen which is the more immediate fruit of the fiſcal meaſure. This is more eminently the caſe in the inſtances of the *cuſtoms* and the *exciſe*: of thoſe branches of taxation by which by far the largeſt portion of the revenue is ſupplied. The officer of exciſe goes no where where he is not a gueſt; and of all gueſts the moſt unwelcome. The eſcheator will have no where to go where he is not *at home*: into no habitation, into no edifice, not ſo much as upon a foot

of

of land, which is not to this purpoſe, which is not as againſt all *individuals*, his *own*. No jealouſies; no colliſion of rights; no partial occupations, extorted at the expenſe of the comfort and independence of proprietors. The exciſe is not only the moſt productive branch of the revenue, but the moſt capable of extenſion, and therefore the moſt liable to be extended. It can ſurely be no ſmall merit in the propoſed ſupply, in addition to its other merits, that in proportion as it extends, in the ſame proportion it puts a ſtop to extenſions of the exciſe.

II. The advantages that follow are of minor importance.

The advantage of *checking litigation* in this way, by the diminution of its aliment, is however not to be deſpiſed. The fiſhing in the troubled waters of

of litigation, for the whole or a part of the property of a diſtant relation or ſuppoſed relation, is one of the moſt alluring, and at the ſame time moſt dangerous, purſuits, by which adventurers are enticed into the lottery of the law. It is like the ſearch after a gold mine, a ſearch by which the property of the adventurer is too often ſunk before the precious ore is raiſed. Cauſes of this nature are by no means unfrequent in Weſtminſter Hall; the famous *Selby* cauſe was a bequeſt, nominally to relations, really to the profeſſion. This ſource of litigation would be effectually dried up by the meaſure here propoſed.

An item, which may naturally enough be added to the account of advantage, is the favour ſhewn to *marriage*, and in particular to *prolific marriages*, the ſort of marriages of

which the title to legiſlative favour ſtands in the moſt plauſible point of view.

That the influence of the ſyſtem in queſtion would be favourable to marriage, and in particular to prolific marriage, will hardly be diſputed. Of fathers and mothers of families it leaves the powers untouched; it places them, in compariſon with ſingle perſons of both ſexes, in a ſituation of privilege and pre-eminence. Within the threſhold of him whoſe marriage has fulfilled the ends of marriage, the foot of the officer of the revenue has no place. His will is executed in all points; whatever he bequeaths, to whomſoever he bequeaths it, offspring, relation, or ſtranger, paſſes without deduction. Whatever reſtriction it impoſes, is all at the expenſe of the celibatary and unmarried. If with pro-

propriety it could be ſtiled a *tax*, it would be a *tax on celibacy*.*

An advantage of a leſs queſtionable nature, is the popularity which ſeems the natural effect of any meaſure wearing the complexion above-mentioned—for popularity, it muſt be confeſſed, popularity, how hollow ſoever be the ground it ſtands upon, can never be refuſed a place among

* In my own eſtimation, the good that can be done by any encouragements of a *poſitive* nature given to marriage, ſhews itſelf, I muſt confeſs, in a very queſtionable point of view; but the reaſons in ſupport of this opinion not being to the preſent purpoſe, will be better ſpared than given. I ſay *poſitive*; for as to the negative kind of encouragement that, in the inſtance where any obſtacles of a political nature can be ſhewn to ſubſiſt, may be afforded by the removal of thoſe obſtacles, the utility of this ſpecies of encouragement ſtands upon a footing altogether different.

the advantages of a meaſure. Satisfaction on the part of a people, ſatisfaction, ſo long as it ſubſiſts, is a real good—ſo long as it ſubſiſts, its title to that appellation is altogether independent of the ſource from which it flows. If, indeed, the utility of the meaſure be illuſory, then, indeed, when the illuſion is diſpelled, there is an end of the advantage; but the advantage, ſo long as it continued, was not the leſs real. Happily, in the preſent inſtance, the advantage is not only *real* but *pure*. Though in the way of affording encouragement to marriage, the propoſed meaſure ſhould in truth be of little ſervice, any farther than as it happened to be thought to be ſo, the pleaſure of ſeeing it popular on this ſcore may be indulged with the leſs reſerve, as the

the deluſion, if it be one, is not in this inſtance attended with any pernicious conſequences.

§ 4. ORIGINALITY.

IF the propoſal relative to this reſource be not an *original* one, its want of originality may be ſeen to afford an objection. If not original it has been *propoſed:* and if it has been propoſed, it has been *rejected:* for aſſuredly it has not been adopted any where.

A *tax on ſucceſſions* might, at firſt glance, preſent itſelf as bearing a reſemblance to the reſource in queſtion; as being a ſort of modification of it, a commencement towards it; as forming, in a manner, a branch of it. But we have already ſeen how per-

perfectly diſſimilar, or rather oppoſite in effect, the *tax* is to the *regulation*, and how much the difference is to its diſadvantage. A tax on ſucceſſions lies as heavy on the individual, as it falls light into the Exchequer.

Taxes on ſucceſſions, (not to mention the old Roman tax, the *viceſſima hereditatum*, the 5 *per cent.* on collateral ſucceſſions) exiſt already in this country; they exiſt in the form of a ſtamp duty, in ſome degree proportional, on probates and letters of adminiſtration; they exiſt in the form of a ſtamp duty on receipts for legacies and diſtributive ſhares. As to the duties on legacies, in what proportion they are *paid* I do not know; but I am ſure they are *evaded*, and very frequently evaded. One ſhould be almoſt ſorry if they were *not* evaded; they are evaded in proportion as confidence

fidence prevails in families. The whole maſs of property goes in the firſt place, into the hands of individuals; a courſe which, indeed, it could not but take, ſo long as the reſource is left to ſtand upon the footing of a tax. The private executor ſets out with getting every thing into his hands; the public gets what this moſt confidential friend of the deceaſed thinks proper to beſtow; of courſe he will not beſtow any thing at the expenſe of the friend of his teſtator, ſo long as he can perſuade himſelf, with any tolerable aſſurance, that the perſon he is befriending will not requite his generoſity with ſuch a degree of baſeneſs, as to make him pay the legacy over again out of his own pocket.

Another circumſtance concurs in diminiſhing the productive power of a tax

a tax upon ſucceſſions.—When the duty amounts to a ſum which appears conſiderable, the levy being a tax, a tax to be levied on an individual, and levied all at once, it wears ſo formidable an aſpect, that the man of finance himſelf is ſtartled at it; he accordingly reduces the rate, and the higher the legacy mounts, the more he reduces it; ſo that all proportionality is deſtroyed. By this means, the better a man can afford to pay, the leſs it is he pays, and the tax has the appearance of a conſpiracy of the richer againſt the poorer claſſes of mankind.—Whence comes this?—only from its being raiſed by a *tax*, and not by a *regulation*, as above propoſed. Under the regulation the public will pay itſelf; the officer of the public will have the ſtaff in his hands; a partiality as unfriendly

friendly to the intereſts of finance, as it is unſeemly in the eyes of juſtice, will diſappear, and wealthy ſucceſſions will yield in proportion to their opulence.*

* The freſheſt and moſt conſiderable tax upon legacies and ſhares in ſucceſſions (that of 29 Geo. III. chap. 51. ann. 1789) has freed itſelf ſo far from this objection; but the duties on probates and letters of adminiſtration remain expoſed to it; as do the anterior taxes on legacies and ſhares in ſucceſſions, impoſed by 20 Geo. III. chap. 28. ann. 1780. The reaſon, in the inſtance of the duty on probates and letters of adminiſtration, ſeems to be, that in that ſtage the value of the ſubject can only be *gueſſed at*; whereas, in the other caſes, it has been *liquidated*.

§ 5. PRODUCE.

To Mr. ——.

INSTEAD of the matter deſtined for the preſent ſection, I muſt content myſelf, for the preſent, with ſending you little more than a blank. —I could not have filled it up, without attempting to lead you into a labyrinth of calculations, which, after all, I could not render complete, for want of *data*, without your aſſiſtance, and which, if the *principle* of the meaſure ſhould not be approved of, would have no claim to notice.

Meantime, as the reſult of the calculations need not wait for the calculations themſelves, and as a ſuppoſition of this ſort, however imperfectly

perfectly warranted, may be more ſatisfactory than a total void, I will beg your indulgence for the following *apperçu*.

Nett annual produce of this reſource upwards of 2,000,000l. over and above the expenſe of collection.

EXPENCE OF COLLECTION.

Eſcheators and ſub-eſcheators, at 5 per cent. upon the above produce	£.100,000
Judicial eſtabliſhment for the purpoſe, at $2\frac{1}{2}$ per cent. which, I apprehend, could not be diſpenſed with	50,000
Total, at $7\frac{1}{2}$ per cent. -	150,000

It is natural I ſhould be over ſanguine; but I muſt confeſs, I ſhould expect to find the above ſum below the mark rather than above it. The calculations, in their preſent ſtate, point at three millions; but then

there are deductions to be made on one hand, as well as additions on the other.*

For my own part, if it depended upon me, I ſhould be very much diſpoſed to turn my back upon calculations; for if the *principle* of the reſource be but approved of, 200,000l. a year would be as ſufficient a warrant for it as 2,000,000l. ſince, whether much or little, it would be all ſo much clear gain, unfelt by any body in the ſhape of a loſs.

* The documents reſorted to as *data* for calculation, were the inſtances of *collateral* ſucceſſion in different degrees, compared with thoſe of *lineal* ſucceſſion, as indicated by the publications on the peerage. The *data* thus obtained were digeſted into tables, including Scotch and Iriſh as well as Engliſh and Britiſh, exiſting as well as extinct. Note added Dec. 9, 1795.

The

The calculations however, ſuch as they are, can be ſubmitted at any time upon a day or two's notice. They will, at any rate, afford a view of the *data* the ſubject affords, of the difficulties to be overcome, and of the uncertainties which are not capable of being cleared up without the aid of Parliament.

§ 6. APPLICATION.

A WORD or two may not be amiſs, reſpecting the application of the produce. In general, this topic may ſeem foreign enough from the conſideration of the ſupply itſelf; but that, as we ſhall ſee, is not altogether the caſe here.

In

In time of full peace, the floating debt provided for, there are but two options with regard to the application of a new ſupply, reduction of debt, and extinction of taxes; for current ſervice is already provided for by exiſting funds.

In time of war there are two additional options; pledging for intereſt of loans, and application to current ſervice.

I will begin with the caſe of war; for though the meaſure would be equally fit for eſtabliſhment at either ſeaſon, yet war is certainly that which holds out to it the moſt promiſing chance for being actually eſtabliſhed. *Neceſſity*, the mother of *invention*, may then be the mother of *adoption* too, which, of the two, is by much the hardeſt offspring to bring forth.

I ſhould

I ſhould not wiſh, nor even expect, to ſee the produce of this reſource appropriated to current ſervice; I ſhould not wiſh, nor even expect, to ſee it among the maſs of pledges given as ſecurity for a loan. The novelty of its complection, the uncertainty of its amount, both ſeem to preclude it from either deſtination: it may be prodigious; it may be nothing: there is no ſaying what it may be *taken* for. Reſources more according to the uſual model, and, therefore, regarded as more certain, *taxes*, in a word, would be the ſupplies, naturally deſtined to ſuch ſervice.

There remain *diſcharge* of debt and *extinction of taxes*. Between theſe two employments, I would wiſh to ſee it divided, and, perhaps, pretty equally divided.

There

There is one portion that could not well be refuſed to the diſcharge of public debt; even in war time; even under the preſſure of any exigency: I mean the portion which exiſts already in that ſhape; where the property conſiſts of a debt due from Government to be diſcharged by an annuity till paid off: in a word, property in Government annuities, or (as it is commonly termed, to the great confuſion of ideas) *money in the funds*. The extinction of ſo much of the debt is here ſo natural a reſult, that it may be ſet down as an unavoidable one:—to keep the debt alive, and ſell it for the benefit of Government; juſt as (if it had fallen into individual hands, it might have been ſold for the benefit of indivi-

dividuals) will ſurely not be thought of.*

Remit taxes? and that in war time?—that would be an extraordinary employment for it indeed!—Extraordinary indeed: but not on that account the leſs eligible: Novel bleſſings ſhine but the brighter for being new.

An opportunity would by this incident be preſented, and, perhaps, this is the only incident by which ſuch an opportunity could be preſented, of ſhaking off the yoke of ſome of the moſt oppreſſive taxes. The whole liſt would then be to be over-hauled, and the worſt choſen picked out and expunged. †

Thoſe

* This part, as far as the calculation above given is to be depended upon, may be reckoned at about th of the year's produce; at about l.

† *Freſh* taxes have, in many inſtances, been

Thoſe which to my conception would ſtand at the head of the liſt, are, as I have ſaid already, the taxes upon juſtice. In relation to theſe, I can ſpeak with confidence, having ſifted them to the bottom, and demonſtrated them, or I know not what demonſtration is, to be the worſt of all taxes, actual or poſſible.

Further from the preciſe limits of

repealed, upon freſh experience of their ineligibility or unpopularity: examples of the repeal of an *old-eſtabliſhed* tax are rare, indeed. That of the *tax on coals borne coaſtwiſe* is an inſtance as honourable to thoſe with whom the repeal originated as it is rare. As to the taxes not *taken off*, but *reduced*, on the inſtitution of the Commutation Tax, the reduction was made, not becauſe they were *ill-choſen*, for they were nothing leſs than ill-choſen, but becauſe they had been ſtrained ſo high as to become *unproductive*: it was made not for *relief*, but for *revenue*.

the

the ſubject I will not attempt to ſtray; unleſs it be for a fantaſtic moment in the way of reverie. Pure as we have found the reſource to be from *hardſhip*, and in all human probability from *odium*, how pregnant, may we *imagine* it at leaſt to be, of *relief!* No law taxes:—no prohibition of juſtice. No tax on medical drugs:—no prohibition of relief from ſickneſs, and from death. No window tax:—no prohibition of air, light, health and cheerfulneſs. No ſoap tax:—no prohibition of cleanlineſs. No ſalt tax:—no prohibition of the only ſuſtenance of a famiſhed people.* Make the moſt of this reſource, and, if not all theſe reliefs, at leaſt the moſt eſſential of them, might perhaps be afforded, even under the preſſure of the war.

* Fiſh to the Highlanders of Scotland.

To do all this, and government never the poorer! To do all this, and have a rich ſurplus for the ſinking fund!—What a feaſt for humanity! What a harveſt of popularity! What a rich reward for wiſdom and virtue in a miniſter!

It is ſcarce neceſſary to obſerve, that neither in any of *thoſe* ways, nor in any other, ſhould ſpecific relief be engaged for, till the means of relief are actually in hand. The produce ſhould be taken for nothing, till it is actually in the Exchequer. When a year of probation is elapſed, the amount will, for any reaſon that can be alledged to the contrary, be as uniform as that of the ſteadieſt tax.

§ 7. HEADS

§ 7. HEADS OF OBJECTION, WITH ANSWERS.*

OBJECTION I.

SUPPOSED tendency to promote diſſipation of the national wealth, by leading men to live upon their capitals, or ſell them for annuities for their own lives, in conſequence of their being reſtrained from benefiting thoſe that are dear to them after their death.

* To Mr. ——. This is but an Index. The Objections and Anſwers are given at large in the body of the paper.

AN-

ANSWER.

No ſuch tendency—for

1. A man *will not* bar thoſe that are *dear* to him, from receiving *any* part, only becauſe there is *ſome* part that he *can not* enable them to receive.

2.—Nor *himſelf*, from diſpoſing in that manner of *any* part, only becauſe there is *ſome* part that he can *not* ſo diſpoſe of.

3. The power of benefiting others after death, is not the ſole motive to accumulation: another, and a ſtill ſtronger and more univerſal one, is the faculty of increaſing a man's fund of perſonal enjoyment during life: a faculty which would be at a ſtand, if he parted with his capital for an annuity.

4. Such

4. Such diſſipation, were it really to be, in here and there an inſtance, the reſult of the meaſure would only be a *diminution*, and that a moſt trifling one, from the *benefit* of it, not any *objection* to the *principle* of it.

OBJECTION II.

BREACH of faith, in the inſtance of property in the funds.

ANSWER.

Not unleſs *confined* to that ſpecies of property, which is not propoſed—

No more than the *exiſting* taxes on *diſtributive ſhares* and *legacies*: which, in as far as there is nothing elſe to pay them, muſt come out of any property a man had in the funds—

No more than any tax on conſumption; which muſt fall upon *ſtockholders* in common with other people; ſince, in as far as a man's own income ariſes out of the funds, every tax he pays, is paid out of what he has in the funds.

Property is not in this way the *more* affected for being in the funds; ſince in any other ſhape, it would be equally reached by the propoſed regulation.

OBJECTION III.

BREACH of faith, in the inſtance of foreign ſtockholders reſident abroad, who would not have been affected by the taxes in lieu of which this would come.

AN-

ANSWER.

NONE: for they may ſell out.

REPLY.

The ſort of obligation they will thereby be laid under to ſell out, is ſtill a hardſhip: the more, as their ſubmitting to it will lower the price—

ANSWER.

YES; were many likely to ſell out on this account, but that is not the caſe—

1. Becauſe much of ſuch ſtock is in the hands of *bodies corporate*—

2.—Among individuals, it is but a ſmall proportion that will be deſtitute of relations *within the pale.*

3.—Fewer ſtill, who would take to heart to ſuch a degree a reſtriction

from which a man's near relations ſtand exempted.

4. Feeling it to be in his power to ſell out at *any* time, a man would neither ſell out at *firſt*, nor *afterwards*.

OBJECTION IV.

IT is pro tanto *very much expoſed at leaſt to evaſion.*

ANSWER.

1. To none but what may be pretty effectually guarded againſt by proper *regiſters*, &c.

2. If it could not, the objection applies—not to the *principle* of the meaſure, but only to the *quantum* of advantage.

3. It

3. It removes *pro tanto* the objection of *breach* of *faith*; ſo far as a man *evades*, ſo far he is not *hurt*.

OBJECTION V.

TENDENCY to ſink the price of land, by glutting the market with it.

ANSWER.

1. No reaſon for ſuppoſing it will tend to *ſink* the price in one way, more than it will to *raiſe* it in another—For

1. Income ariſing out of *land*, being more generally eligible, will always fetch more than equal income ariſing out of the *funds*: ſtill more, than income depending upon mere *perſonal* ſecurity—

2. Nothing therefore can ſink the price of land, without ſinking that and the price of ſtocks together; nor without ſinking the price of ſtocks more than the price of land: nor raiſe the price of ſtocks, without raiſing the price of land.

3. It will tend to *raiſe* the price of ſtocks at any rate, as to that part of the property it attaches upon, which it finds *already* in the ſhape of ſtock, and which it will of courſe extinguiſh and take out of the market.—As alſo in reſpect of whatever other part is applied to the extinction of the public debt.

Admitted, that a depreciation in the price of property in land, in compariſon of that of property in the funds, might take place, if land were as yet at a monopoly price, as Adam Smith ſeems to think it is. B. 3. C. 4

But this does not ſeem to be the caſe; ſince a man can make three *per cent.* by laying out his money in land, when he can make but three and a half *per cent.* by laying it out in the funds; which is no more than an adequate difference, for the difference, in point of general eligibility, between the two ſources of income.

II. A fall in the price of land is conſidered not as an ineligible, but as an eligible event, by Adam Smith [B. 3, C. 4] though not by me, who referring every thing to the feelings of individuals, regard the ſenſation of loſs thus produced, as an evil outweighing every poſſible advantage.

OBJECTION VI.

MONEY, thus obtained, will be COLLECTED *at greater* EXPENSE *than if obtained from taxes.*

ANSWER.

1. No particular reaſon for thinking ſo—

2. Were this clear, it would afford no objection; becauſe none of the *hardſhip* would be produced here, which is the reſult of expenſe when defrayed by taxes.

OBJECTION VII.

INCREASE of the INFLUENCE *of the* CROWN, by the new *places* that would be neceſſary.

AN-

ANSWER.

1. Not more from *this* mode of ſupply, than from any other of equal magnitude.

2. Were the objection any thing determinate, the weight of it would bear—not againſt a *uſeful* eſtabliſhment like this, but againſt *uſeleſs* or *leſs uſeful* places.

3. The objection, if it were worth while, might be got rid of in part by giving the appointment of *Eſcheators* to the *Freeholders*, who now have the appointment of *Coroners*.

OBJECTION VIII.

THE POWERS *that muſt be given for the purpoſe of* COLLECTION, *would be* ABUSED.

AN-

ANSWER.

1. This mode of ſupply is not more open to abuſe of power, to the *prejudice* of the individual, than any other.

2. Abuſe of power by undue *indulgence* to the individual, to the prejudice of the revenue, goes only to the *quantum* of the advantage, and forms therefore no objection to the *principle* of the meaſure: and as to the individual, ſo far as he is *indulged*, duly or unduly, he is not *hurt*.

3. Abuſes of both kinds may be more effectually checked in this inſtance than in others, viz. by the publicity that, even for other purpoſes, would require to be given to the proceedings.

The

The remark, though bad as an *objection*, is good as a *warning*, and as ſuch would be attended to.

OBJECTION IX.

BY the facility it would give to the buſineſs of ſupply, it would be an encouragement to PROFUSION *on the part of government.*

ANSWER.

If this were an objection, the moſt burthenſome mode of ſupply would be the beſt—

Rendering ſupply more burthenſome than it might be, is a remedy worſe than the diſeaſe; or rather an aggravation of the diſeaſe, to the excluſion of the remedy.

The following are the ſuppoſitions which the objection muſt take for granted—1. that all expenditure is unneceſſary; 2. that this mode of ſupply would be ſubmitted to; 3. that no other would.

It would be a ſtrange inconſiſtency, if thoſe who could not be brought to adopt other modes of checking profuſion, could, in the mere view of checking profuſion, be brought to reject this mode of ſupply.

OBJECTION X.

IT would make a REVOLUTION *in property.*—

ANSWER.

The tendency of this objection, the force of which conſiſts altogether in the

the abuſe of a word, is to point to a wrong object the juſt horror conceived againſt the *French* Revolution. The characteriſtic of *that* revolution is to trample in every poſſible way upon the feelings of individuals. The characteriſtic of *this* meaſure, is to ſhew more tenderneſs to thoſe feelings, than *can* be ſhewn by the taxes to which it is propoſed to ſubſtitute it.

OBJECTION XI.

THE property of the nation would thus be SWALLOWED *up in the Exchequer*—

ANSWER.

No more than by taxes to the ſame amount.

OBJECTION XII.

IT would be a SUBVERSION *of the ancient law of inheritance in this country—*

ANSWER.

A *quiet* alteration, made by a mere *extenſion* given to the *old* law, to a branch more ancient than almoſt any of thoſe at the expenſe of which it is extended. No *ſubverſion*, except in as far as every *amendment* is a *ſubverſion*.

OBJECTION XIII.

IT would be an INNOVATION.

ANSWER.

No more than every *new* law; nor, as we have ſeen, ſo *much* as moſt new laws

laws—No more than a ſet of taxes to the ſame amount—

Not ſo much—for all the revenue laws we have, are *innovations* in compariſon of the law of *Eſcheat*.

§ 8. EXISTING LAW.

CAN any thing of *harſhneſs* be imputed to the propoſed meaſure? Not when viewed by itſelf, we have ſeen already. View it, then, in compariſon; turn to exiſting law. No excluſion of the father *here* as *there*, on pretence of the *ponderoſity* of inheritances: no excluſion of the half-blood, as if the ſon of my father or my mother were a ſtranger to me: no

no excluſion of all children but the firſt-born; as if the firſt-born only lived upon food, and all others upon air: no excluſion of the better half of the ſpecies, as if the tender ſex had no need of ſuſtenance. The feelings of individuals, ſole elements of public happineſs, theſe, and theſe only, are the conſiderations that have *here* been excluſively conſulted, and their ſuggeſtions undeviatingly adhered to; human feelings, the only true ſtandards of right and wrong in the buſineſs of legiſlation, not lawyers quibbles, nor reaſons of other times, that have vaniſhed with the times.

Purſue the compariſon yet farther; on the one hand no harſhneſs at all, as we have ſeen; on the other, a harſhneſs which is incurable. The propoſed law, taking nature for its guide,

guide, leads expectation by a ſilken ſtring. The exiſting law, purſuing the ghoſts of departed reaſons, thwarts expectation at every ſtep, and can never ceaſe to do ſo. It does ſo, becauſe it is in the *ſpeechleſs* ſhape of *common* law; and it would do ſo ſtill, even though *words* were given to it, and it were converted into ſtatute law. Reaſons rooted in utility, are ſo many anchors by which a law faſtens itſelf into the memory; lawyers quibbles are a rope of ſand, which neither has tenacity of its own, nor can give ſtability to any thing elſe. Rules and quibbles together, the impreſſion they make upon the mind, is that of the wind upon the waves; and when incidents ſpring up to call them into action, the ſenſation produced is the ſenſation of a thunderſtroke.

§ 9.

§ 9. ANTIENT LAW.

SHALL we dig into antiquity?—The reſult will be ſtill more favourable. Reckoning from the ſubverſion of the Roman empire, property, conſidered as ſurviving to the proprietor, is comparatively of modern date. Under the feudal ſyſtem, in the morning of its days, eſtates greater than life-eſtates were unknown: the moſt fixed of all poſſeſſions fell back into the common ſtock upon the death of the poſſeſſor; and before the reign of the Conqueror was at an end, the feudal tree, tranſplanted from the continent into this our iſland, had covered almoſt the whole ſurface of the kingdom with its gloomy

ſhade. This venerable ſyſtem had, indeed, before that period, loſt a good deal of its vigour, which is the ſame thing as to ſay its rigour, and the principle of ſucceſſion had taken root under it, but not without being loaded with conditions, and weakened by defalcations and diſtortions, over and above thoſe which have been already glanced at, and which we are plagued with to this day. The relaxation too was an innovation, which, in the vocabulary of antiquarian idolatry, as well as of indiſcriminating timidity, means a corruption, of the primæval ſtate of things.

At a much later period, moveable property took, if not exactly the ſame courſe with immoveable, a courſe more oppoſite to that indicated by utility, and equally repugnant to that which ſeems preſcribed by nature.

The more ſubſtantial part, the immoveable, had been reſerved for the maw of feudal anarchy: the lighter part, the moveable, was carried off by ſome holy perſonage for *pious uſes*; and of all uſes the moſt pious was his own. Moveable and immoveable together, power without mercy, or impoſture without ſhame, took the whole under their charge; the claims of the widow and the orphan were as little regarded as thoſe of the moſt diſtant relative. So late even as the latter part of the reign of Edw. III.* it required an exertion of parliamentary power, to make the man of God diſgorge, in favour of the fatherleſs and the widow.†

The

* 31 Edw. III. p. 1. ch. 11. 9 co. 40. in Burn's Eccl. Law, iv. 197.

† Hume has fallen into a miſtake on this ſubject

The right of bequeſt, the right of governing property by one who is no longer in exiſtence to enjoy it, is an innovation ſtill more modern. In its relation to moveables, it was conquered from the ſpiritual power by gradual and undefinable encroachments: the validity of its exerciſe hav-

ſubject, in ſuppoſing, that in the reign of Henry II. moveables were the prey not of the ſpiritual power but the temporal. "It appears," (ſays he, vol. i. ann. 1100) "from Glanville, "the famous juſticiary of Henry II. that in "his time, where any man died inteſtate, an "accident which muſt have been frequent "when the art of writing was ſo little known, "the king, or the lord of the fief, pretended "to ſeiſe all the moveables, and to exclude "every heir, even the children of the deceaſed; "a ſure mark of a tyrannical and arbitrary "government." So far Hume, referring to Glanville, l. vi. c. 16. But what Hume underſtands of inteſtates in general, Glanville confines to baſtards.

ing, from the conqueſt to the preſent time, depended on the deciſion of that ſame power, which, till the above-mentioned ſtatute of Edw. III. was intereſted in denying it: and, after the right was ſecured, the facility of its exerciſe muſt, for a long time, have been confined within narrow bounds, by the ſcarcity of literary acquirements. In its relation to immoveables, it was not placed on ſolid ground, till the ſtatute of Henry VIII. and then only by implication: nor (to take the matter in the words of Blackſtone) was it "till even after the "reſtoration, that the power of de-"viſing real property became ſo uni-"verſal as at preſent.*

All this while the law of Eſcheat, coæval with the reign of the Con-

* II. Comm. ch. 1.

queror,

queror, dwelt upon as a ſubject of importance in the reign of Henry the Second,* touched upon by a numerous ſeries of ſtatutes, reaching down as low as Edward the Sixth, recogniſed by deciſions of ſo recent a period as the late reign,† exiſts in indiſputable vigour; although the facility of tracing out heirs in theſe times of univerſal and inſtantaneous communication, added to the want of an adminiſtrative eſtabliſhment adapted to the collection of ſuch a branch of revenue, prevent it from being noticed, in its preſent ſtate, in the account-book of finance.

* Glanville, l. vii. c. 17.

† Atkyns' Reports.

§ 10.

§ 10. BLACKSTONE.

IS *opinion* worth reſorting to? A poor warrant, after the *fiat* of utility, written in characters ſo legible. In morals, in politics, in legiſlation, the *table of human feelings*, is, I muſt confeſs, to me what the Alcoran was to the good Muſſulman: opinions, if unconformable to it, are falſe; if conformable, uſeleſs. Not ſo to many a worthy mind: for their ſatisfaction then, even this muddy ſource of argument ſhall not remain unexplored. Shall Blackſtone then be our oracle? Blackſtone, the moſt revered of oracles though the lateſt?—From him we have full licence: from him we have a latitude, outſtretching, and that even to extravagance,

vagance, the utmoſt extent which either humanity or policy would permit us to aſſume. But let us hear him in his own words.

Blackſt. Comm. II. 12. "Wills, "therefore (ſays he) and teſtaments, "rights of inheritance and ſucceſ- "ſions, are all of them creatures of "the civil or municipal laws, and "accordingly are in all reſpects regu- "lated by them; every diſtinct "country having different ceremo- "nies and requiſites to make a teſta- "ment completely valid: neither "does any thing vary more than the "right of inheritance under different "national eſtabliſhments. In Eng- "land particularly, this diverſity is "carried to ſuch a length, *as if it* "*had been meant to point out the power* "*of the laws in regulating the ſucceſ-* "*ſion to property, and how futile every* "*claim*

" *claim muſt be that has not its foun-*
" *dation in the poſitive rules of the*
" *ſtate.* In perſonal eſtates the fa-
" ther may ſucceed to his children;
" in landed property he can never be
" their immediate heir, by any the
" remoteſt poſſibility: in general
" only the eldeſt ſon, in ſome places
" only the youngeſt, in others all the
" ſons together, have a right to ſuc-
" ceed to the inheritance: in real
" eſtates males are preferred to fe-
" males, and the eldeſt male will
" uſually exclude the reſt: in the
" diviſion of perſonal eſtates, the
" females of equal degree are ad-
" mitted together with the males,
" and no right of primogeniture is
" allowed."

Thus far our Apollo.—Legatees, we ſee, are nothing to him: he ſacri-

fices parents to us, and even chil-

dren: he ſees not that children are not only *expectants*, but *co-occu-pants*. No ſympathy for diſappointed expectation; no feeling for beggared opulence; no regard for meritorious ſervice; no compaſſion for repulſive infirmity, obliged to forego aſſiſtance, or to borrow it of ſelfiſh hope. The law, his idol, has no bowels; why ſhould we? The rights of legatees, the rights of children, are mere crea-tures of the law: as if the rights of occupants were any thing more. Of wills or even ſucceſſion, he knows no uſe, but to prevent a ſcramble. The buſineſs of ſucceſſion is a theatre which the laws of nations have pitched upon, as it were in concert, for the exhibition of caprice: none with greater felicity than the law of England:—ſhe has her views in this, and they are always wiſe ones:—to

inſult

inſult the ſubject, to ſhew him what arbitrary power is, and to teach him to reſpect it.

" This one conſideration (conti-
" nues he) may help to remove the
" ſcruples of many *well-meaning* per-
" ſons, who ſet up a *miſtaken* con-
" ſcience in oppoſition to the rules of
" law. If a man *diſinherits his ſon*,
" by a will duly executed, and leaves
" his eſtate to a ſtranger, there are
" many who conſider this proceeding
" as *contrary to natural juſtice:* while
" others ſo ſcrupulouſly adhere to the
" ſuppoſed intention of the dead,
" that if a will of lands be atteſted
" by only *two* witneſſes inſtead of
" *three*, which the law requires, they
" are apt to imagine that the heir is
" bound in conſcience to relinquiſh
" his title to the deviſee. But both
" of

" of them *certainly proceed upon very*
" *erroneous principles:* as if, on the
" one hand, the ſon had by *nature* a
" right to ſucceed to his father's
" lands; or as if, on the other hand,
" the owner was by nature intitled
" to direct the ſucceſſion of his pro-
" perty after his deceaſe. Whereas,
" the *law of nature* ſuggeſts, that
" on the death of the poſſeſſor the
" eſtate ſhould again become com-
" mon, and be open to the next
" occupant, unleſs otherwiſe ordered
" for the ſake of civil peace by the
" poſitive law of ſociety."

" The right of inheritance, (ſays
" he but two pages before) or de-
" ſcent to the children and relations of
" the deceaſed, ſeems to have been
" allowed much earlier than the
" right of deviſing by teſtament.

" We are apt to conceive at firſt
" view that it has *nature* on its ſide :*
" yet we often *miſtake* for *nature* what
" we find eſtabliſhed by long and
" inveterate *cuſtom*.† It is certainly
" a *wiſe and effectual*, but clearly a
" *political eſtabliſhment* ;‡ ſince the
" *permanent* right of property,§ veſt-
" ed in the anceſtor himſelf, was

* Quere, What is "*nature?*"

† Quere, The difference between "*nature*" here and "*cuſtom?*"

‡ Quere, What "*eſtabliſhments*" there are in the world, beſides "*political*" ones? Quere, What ſignifies whether a "*political eſtabliſhment*" be a "*natural*" one or no, ſo long as it is "*a* "*wiſe and effectual*" one?

§ If an "im*permanent*" right is a "*natural*" one, quere, at what o'clock does it ceaſe to be ſo?—If it is *natural* a right of property ſhould *commence*, how comes it to be *unnatural* it ſhould *continue?*

" no

" no *natural*, but merely a *civil*
" right."*

What we learn from all this is, that ſo long as a man can find a pretence for getting rid of the phraſe *contrary to natural* "*juſtice*," there is no harm in his children's being left by him to ſtarve: and that thoſe who would make a "*conſcience*" of leaving their children thus to ſtarve, are "*well-meaning*," but "*miſtaken*" people. Quere, who is this ſame Queen "*Nature*," who makes ſuch ſtuff under the name of laws? Quere, in what year of her own, or any body elſe's reign, did ſhe make it, and in what ſhop is a copy of it to be bought,

* Quere, What ſignifies whether it was a "*natural right*" or no? Quere, What ſort of a thing is a "*natural right*," and where does the *maker* live, particularly in *Atheiſt's town*, where they are moſt rife?

that

that it may be burnt by the hands of the common hangman, and her Majeſty well diſciplined at the cart's tail?

It being ſuppoſed, in point of *fact*, that the children have or have not a right, of the ſort in queſtion, given them by the *law*, the only rational queſtion remaining is, whether, in point of *utility*, ſuch a right *ought* to be given them or not?—To talk of a *Law of Nature*, giving them, or not giving them a *natural right*, is ſo much ſheer nonſenſe, anſwering neither the one queſtion nor the other.

FINIS.

BSB Bayerische StaatsBibliothek

MDZ Münchener DigitalisierungsZentrum Digitale Bibliothek

Bentham, Jeremy

Supply without Burthen; Or Escheat vice Taxation being a Proposal For A Saving In Taxes By An Extension of the Law of Escheat: Including Strictures on the Texes On Collateral Succession, Comprized in the Budget of 7th Dec. 1795 ; to which is prefixed, (Printed in 1793, and now first published,) A Protest Against Law Taxes: Shewing The Peculiar

London 1795

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